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PRIDEAUX'S

PRECEDENTS

IN

CONVEYANCING;

WITH

Dissertations

ON ITS

LAW AND PRACTICE.

TWELFTH EDITION

BY

FREDERICK PRIDEAUX,

LATE PROFESSOR OF THE LAW OF REAL AND PERSONAL PROPERTY TO THE INNS OF COURT,

AND

JOHN WHITCOMBE.

BOTH OF LINCOLN'S INN, ESQS., BARRISTERS-AT-LAW.

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PREFACE

TO THE TWELFTH EDITION.

THE present edition is adapted to The Conveyancing Act, 1881, and to the following important measures of the last session, namely, The Conveyancing Act, 1882, The Settled Land Act, 1882, The Married Women's Property Act, 1882, and The Bills of Sale Amendment Act, 1882.

F. P.
J. W.

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APPENDIX.

An Act to amend the law of Vendor and Purchaser, and further to simplify Title to Land 743

An Act for simplifying and improving the practice of Conveyancing; and for vesting in Trustees, Mortgagees, and others, various powers, commonly conferred by provisions inserted in Settlements, Mortgages, Wills, and other Instruments; and for amending in various particulars the Law of Property; and for other purposes . . 746

An Act for further improving the practice of Conveyancing; and for other purposes 805

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CONDITIONS OF SALE.

Particulars and conditions.

Upon a sale by auction, the property which is the subject of the sale is usually described in printed particulars, to which are annexed conditions specifying the terms and stipulations subject to which the sale is to be made.

Division of the subject of conditions.

Conditions of sale may be conveniently considered under the following heads:—I. Conditions relating to title and evidence of title, and as incidental thereto, the mutual obligations of vendor and purchaser in this respect in the absence of stipulation. II. Conditions relating to the completion of the purchase. III. Conditions relating to misdescriptions in the particulars, and compensation in respect thereof. IV. Conditions relating to other matters, and Conditions generally.

I. *Conditions relating to title and evidence of title, and the mutual obligations of vendor and purchaser as to title and evidence of title in the absence of stipulation.*

(A) *Generally.*

The obligations of a vendor as to proving his title in the absence of stipulation.

When a person offers an estate for sale without qualification, he impliedly asserts that it is his to sell, and that he has a good title. He is therefore bound, in the absence of stipulation, to deduce and verify his title for a period of at least forty years preceding the day of sale (*a*). This obligation involves the delivery to the purchaser of

(*a*) By the statute 37 & 38 Vict. c. 78, sect. 1, forty years is substituted for sixty years, which was the old rule, and which was calculated with reference to the probable duration of human life, it being considered that sixty years was the shortest period at the end of which it could be fairly presumed that property represented or supposed to be held in fee simple might not, in fact, be held for a life or lives still existing. See Else *v.* Else, L. R. 13 Eq. 196, where the production of a will, dated nearly fifty years prior to the day of sale, revealed the fact that the vendor's estate was determinable on the death, without issue, of a person still living and childless.

Length of title. Production of deeds. Identification of parcels. Proof of facts.

an abstract of title extending over the above period; the production of all deeds and documents stated in the abstract; the identification of the property as described in the Particulars with the property described in the several documents of title, and the strict proof by certificates, declarations, or otherwise, of all births, marriages, deaths, heirships, and other matters and facts forming a link in the chain of title, unless such facts are recited or stated in documents twenty years old, in which case the recital or statement is under the new rules enacted by the Vendor and Purchaser Act, 1874 (*b*), made sufficient evidence. But on all sales made after the 31st December, 1881, the expense of producing documents and procuring evidence not in the vendor's possession must be borne by the purchaser requiring it (*c*). Documents in the vendor's possession should be produced at his own residence, or at the office of his solicitor, or of his solicitor's London agent, but as regards documents in the possession of other persons, the purchaser must pay for the journeys of his solicitor to examine them (*c*).

Expense of evidence not in vendor's possession.

Place where documents should be produced, and expense of journeys to examine them.

Purchaser's rights in respect of the vendor's title should be restricted by conditions, if necessary.

If the state of a vendor's title makes it unsafe for him to proceed to a sale under the full obligation above mentioned, he should sell under conditions restricting the legal rights of the purchaser. The extent to which this ought to be done depends on the particular circumstances of each title, and in preparing conditions, the vendor's solicitor should bear in mind—first, that it is his duty to protect his client from being subjected to troublesome enquiries which may be guarded against by reasonable conditions; and, secondly, that to insert very stringent conditions may have the effect of damping a sale and deterring purchasers, although as a matter of experience this is seldom the case.

As to the commencement of the title.

When the vendor has in his possession or power a deed of about forty years old, which will form a good root of title, and the title is by the subsequent deeds duly and regularly deduced therefrom, and there are no special circumstances making it desirable to commence

(*b*) Sect. 2, rule 2.
(*c*) Conveyancing Act, 1881, sect. 3, sub-sect. (6).

at a more recent date, the abstract should be made to commence with that deed. But where this cannot conveniently be done, a condition must be inserted making the abstract to commence with a deed of more recent date. In the case of small properties, the production of a thirty or twenty years, or even a shorter title, will often be deemed sufficient, and a condition to that effect will not deter a purchaser.

Purchaser precluded from requiring production of any document, &c., dated before stipulated commencement of title.

The Conveyancing Act, 1881, sect. 3, sub-sect. 3, provides that a purchaser shall not require the production, or any abstract or copy, of any document, dated or made before the time prescribed by law or stipulated for commencement of the title, even though the same creates a power which is subsequently exercised by an abstracted instrument, nor require any information, or make any requisition, objection, or inquiry, with respect to any such document or the title prior to that time, notwithstanding that any such document, or that prior title, is recited, covenanted to be produced, or noticed; and he must assume, unless the contrary appears, that the recitals contained in the abstracted instruments of any document forming part of the prior title, are correct and give all the material contents of the document so recited, and that every document so recited was duly executed by all necessary parties, and perfected, if and as required, by fine, recovery, acknowledgment, inrolment, or otherwise.

Earlier document showing serious defect in present title, should not be withheld.

If the production of a document dated before the time stipulated for the commencement of the title would disclose a serious defect in the present title, *e.g.* that the vendor had only an estate for life instead of the fee simple, or that his estate was otherwise determinable (*c*), or that the property was subject to a mortgage (*d*), a purchaser would not be precluded by the above enactment from objecting on this account, should he obtain knowledge of it, nor would the vendor be justified in concealing from him the document showing the defect.

Condition should be inserted

Where a vendor is aware that his title is defective, the only proper and safe course is to state clearly on the

(*c*) Else *v.* Else, 13 L. R. Eq. 196.

(*d*) Waddell *v.* Wolfe, L. R. 9 Q. B. 515. See also Harnett *v.* Baker, L. R. 20 Eq. 50; Smith *v.* Robinson, 13 Ch. D. 148.

where vendor has defective title.

face of the conditions the nature of the defect, and to provide that no objection shall be made on account thereof (*e*), or to refer the purchaser to, and give him an opportunity of inspecting before the sale, the documents showing the real state of the title, and provide that he shall accept such a title as the documents disclose. A general condition which does not state that there is any defect, though its language would be sufficiently comprehensive to cover it if known to exist, will not protect the vendor. Thus, where the conditions provided that no objection should be taken in respect of a specified under-lease, or in respect of "any other under-lease" prior to a certain date, and it appeared that there was another existing under-lease known to the vendor, it was held that he ought to have disclosed it, and had not relieved himself of this obligation by the general condition (*f*).

A condition will be deemed misleading if it requires the purchaser to assume something which the vendor knows to be untrue (*ff*).

Condition that purchaser shall accept such title as vendor has.

A vendor may stipulate for the sale of an estate with such title only as he happens to have, and a purchaser buying under such a contract cannot complain if he gets a defective title (*g*). Thus, where on a sale by the assignees of a bankrupt it was provided that the purchaser should have an assignment of the bankrupt's interest "under such title as he lately held the same, an abstract of which may be seen at the office of the

(*e*) See Smith *v.* Watts, 4 Drew. 338, as a case in which the condition was held sufficiently precise, and Drysdale *v.* Mace, 5 De G. M. & G. 103; Webb *v.* Kirby, 7 *ib.* 376; and Osborne *v.* Harvey, 7 Jur. 229, as cases where the condition was held not binding, because not expressed with sufficient clearness.

(*f*) Edwards *v.* Wickwar, L. R. 1 Eq. 68.

(*ff*) *Re* Banister, 12 Ch. D. 131. It is difficult, however, to reconcile with the proposition in the text, the case of Best *v.* Hammond, 12 Ch. D. 4, where on a sale by a railway company of superfluous land it was stipulated that the purchaser should "assume and admit that everything (if anything was necessary) had been done by the company to enable them to sell, &c." It was discovered by the purchaser that the property had not been offered to the former owners who had a right of pre-emption, and it was held that he was bound by the condition.

(*g*) Freme *v.* Wright, 4 Madd. 364. See also Wilmot *v.* Wilkinson, 6 B. & C. 506; Spratt *v.* Jeffery, 10 B. & C. 249; 8 L. J. K. B. 114; Hume *v.* Pocock, L. R. 1 Ch. 379.

solicitor," and the auctioneer stated that it was a re-sale on account of a defect in the title, and that the purchaser was not to expect a good title, the purchaser was compelled to complete, although the title was defective (*h*). So where the purchaser agreed to take the vendor's title without dispute, he was not allowed to object on account of the legal estate being outstanding (*i*). But a condition, that the purchaser shall only be entitled to the production of such of the deeds as are in the vendor's possession, does not affect the right of the purchaser to require the deduction of a good title, and to have the title verified by the production of other satisfactory evidence, if the deeds themselves are not produced (*j*). Conditions will not be construed to relieve the vendor from the liability of verifying the abstract by proper evidence, unless they are expressed in plain and unambiguous language to that effect.

If the facts of a title are stated, and it is then stipulated that the purchaser shall take such title as those circumstances can confer upon the vendor, the purchaser will be bound to take the title, such as it is; but if the conditions state as a positive fact, and not as a conclusion of law from the circumstances detailed, that the vendor has a power to sell the fee, the purchaser is entitled to require the vendor to show his power to sell, as it may have arisen from separate and independent sources (*k*).

Condition where vendor cannot produce original deed.

If a vendor is unable to procure the production of original deeds not being instruments of record, he should insert a condition to protect him from objections on that account.

(B) *As to leaseholds including property held by under-lease.*

Under old law, vendor of lease was bound to

Under an open agreement to grant or assign a lease, the intended lessor or vendor was, until the recent statute, bound to produce and verify the lessor's title (*l*),

(*h*) Freme *v.* Wright, *ubi suprà*.
(*i*) Duke *v.* Barnett, 2 Coll. C. C. 337.
(*j*) Southby *v.* Hutt, 2 M. & C. 207; Osborne *v.* Harvey, 7 Jur. 229.
(*k*) Johnson *v.* Smiley, 17 Beav. 223.
(*l*) Sug. V. & P. 307; Shanks *v.* St. John, L. R. 2 C. P. 376.

produce lessor's title under an open agreement.

unless the lease was by an ecclesiastical corporation (*m*), and a condition that the vendor should not be required to produce the lessor's title did not prevent the purchaser from himself investigating the title and objecting on the ground of defects thus discovered (*n*). But in a case where the condition was that the lessor's title would not be shown and should not be inquired into, and the purchaser on inquiry discovered that the lessors had no power of leasing the property, it was held that he was precluded by the condition from raising any objection to the title on this account (*o*).

The language of the condition in the last-mentioned case was considered as precluding enquiry from any quarter, and consequently all objection, but a condition that "the title shall commence with the lease, and that no requisition or inquiry shall be made respecting the prior title," has been held to mean merely that no enquiry or requisition shall be made of the vendor, and not to preclude enquiry elsewhere, or objections founded on the result of such inquiry (*oo*).

Secus under new law.

By the Vendor and Purchaser Act, 1874 (*p*), it is provided that under a contract to grant or assign a term of years, whether derived or to be derived out of a freehold or leasehold estate, the intended lessee or assign shall not be entitled to call for the title to the freehold. And by the Conveyancing Act, 1881, it is provided that when land is held by lease, the purchaser shall assume, unless the contrary appears, that the lease was duly granted (*q*).

Title to leaseholds begins with lease.

It follows that on a sale of leaseholds, the title will begin, in the absence of stipulation, with the lease, however recent in date. It is apprehended, however, that the purchaser would be able to raise objections to its validity on grounds appearing on the face of it, or discovered *aliunde*, and if it is wished to preclude such objections there must be a special condition.

(*m*) Fane *v.* Spencer, 2 Mer. 430.
(*n*) Shepherd *v.* Keatley, 1 C. M. & R. 117; 3 L. J. (N. S.) Ex. 288.
(*o*) Hume *v.* Bentley, 5 De G. & Sm. 520.
(*oo*) Darlington *v.* Hamilton, Kay, 550; Waddell *v.* Wolfe, 9 Q. B. 515.
(*p*) Sect. 2, rule 1.
(*q*) Sect. 3, sub-sect. 4.

When property offered for sale is part of a larger property held under one lease, the fact should be stated in the particulars, as otherwise a purchaser might object on the ground that he would be liable to eviction under the condition of re-entry for breaches of covenant committed in respect of the remaining property. No such objection can be made, if the fact is stated (*r*). If it is held with other property under same lease, fact should be stated.

A purchaser of leaseholds will be deemed to have notice of the covenants and provisions in the lease, as it is his own fault if he does not inspect it before he buys. But this rule does not preclude him from objecting, or claiming compensation, if the particulars contain any misrepresentation (*s*) or important omission, calculated to mislead a purchaser (*ss*). Purchaser has notice of covenants in lease, but there must be no misrepresentation.

On the sale of leaseholds which have been renewed from time to time, it may be necessary to negative the right of the purchaser to call for the production of the surrendered leases. Renewable leaseholds.

If the property offered for sale is an under-lease, the fact should appear in the particulars or in the conditions; for if it is described as a lease and it turns out that the superior lease comprises other property, or contains covenants different from those in the under-lease, so that the under-lessee is liable to eviction for a breach of covenants in respect of the other property, or for a breach of any covenants other than those contained in the under-lease, the contract cannot be enforced against the purchaser (*t*). But if the superior lease does not comprise other property, and the covenants in it are identical with those in the under-lease, and the rent reserved is a peppercorn or nominal rent merely, so that the purchaser paying the rent and observing the covenants in the under-lease will be safe from eviction by the superior lessor, it is doubtful whether specific performance could be resisted. In *Madeley* v. *Booth* (*tt*), property sold as a lease for An under-lease should be sold as such.

(*r*) Walter *v.* Maunde, 1 J. & W. 181; Pattison *v.* Long, 6 Beav. 590; Camberwell & South London Building Society *v.* Holloway, 13 Ch. D. 754.

(*s*) Weston *v.* Savage, 10 C. D. 736.

(*ss*) Jones *v.* Rimmer, 14 Ch. D. 588.

(*t*) Darlington *v.* Hamilton, 1 Kay, 550; Blake *v.* Phinn, 3 C. B. 976; 16 L. J. C. P. 159.

(*tt*) 2 De G. & Sm. 718.

ninety-nine years was discovered to be a derivative term created by a mortgage less by three days than the original term of ninety-nine years, and the Court refused to enforce specific performance, although there was a condition making misdescriptions a subject of compensation; but this decision has been disapproved of, and in *Darlington* v. *Hamilton* (*tt*), Wood, V.-C., observed, "It has never been decided—and I do not mean now to touch that question—that if a person having a clear title as lessee for a term makes another lease for a shorter term, and then the under-lessee sells by auction the under-lease, describing it as a lease, and subject to a condition of sale that the lessor's title is not to be inquired into, and the lessor's title is perfectly good, and is not a freehold, but only a term of years, this alone would be a reason for resisting specific performance."

If property is described as held on lease, and it is provided by the conditions that the lease may be inspected before the sale, and that a purchaser shall be deemed to have notice of its contents, he will be deemed to have notice accordingly, and cannot object if the lease on the face of it appears to be an under-lease, it being no misdescription calculated to deceive to describe an under-lease as a lease (*u*).

Purchaser of an under-lease has constructive notice of covenants in original lease.

If property is sold as an under-lease, the purchaser will be considered to have constructive notice of the covenants in the original lease, except perhaps any which may be of an unusual character (*uu*), and it is not an objection to the title that the under-lease may become forfeited by the breach of the covenants in the original lease (*v*).

Purchaser of under-lease not entitled to production of title to leasehold reversion.

It is provided by the Conveyancing Act, 1881, that under a contract to sell and assign a term of years derived out of a leasehold interest in land, the intended assign shall not have the right to call for the title to the leasehold reversion (*vv*); and that when land sold is held by under-lease the purchaser shall assume, unless the con-

(*tt*) 1 Kay, 550.

(*u*) Camberwell, &c., Society *v.* Holloway, 13 Ch. D. 754.

(*uu*) Flight *v.* Barton, 3 M. & K. 282; Cosser *v.* Collinge, *ib.* 283.

(*v*) Hayford *v.* Criddle, 22 Beav. 477.

(*vv*) Sect. 3, sub-sect. (1).

trary appears, that the under-lease and every superior lease were duly granted (*w*).

Under new as well as old law, vendor should disclose fact that property is held by under-lease.

It is apprehended that these enactments do not alter the position of the vendor as regards his duty to disclose the fact that the property is held by under-lease, and that if the fact is not disclosed, a purchaser discovering it *aliunde* may under the new as well as under the old law refuse specific performance, unless the vendor satisfies him by production of the superior lease that it contains nothing to prejudice him, while on the other hand, if the fact is disclosed, the purchaser will, under the new as well as the old law, be deemed to have notice of the contents of the superior lease, because he may, if he chooses, ask for its production before he bids, and it is his own fault if he does not do so.

Inspection of superior lease should be offered.

When the vendor of property held by under-lease is in a position to produce the superior lease, it is desirable as a general rule that he should give intending purchasers the opportunity of inspecting it, as well as the under-lease, at or before the sale (*x*).

Receipt for last payment of rent under lease or under-lease to be evidence of observance of covenants.

By the Conveyancing Act, 1881, it is provided as regards property held by lease or under-lease that on production of the receipt for the last payment due for rent under the lease or under-lease before the date of actual completion of the purchase, the purchaser shall assume, unless the contrary appears, that all the covenants and provisions of the lease or under-lease have been duly performed and observed, and in case of an under-lease that all rent due under every superior lease and all the covenants and provisions of every superior lease have been paid and duly observed and performed, up to the date of actual completion of the purchase (*y*).

This enactment would not, it is apprehended, preclude a purchaser from showing that there had been a breach of covenant. It would therefore be safer, as a general rule, to insert a condition making the last receipt conclusive evidence of the performance of the covenants or of the waiver of any breach up to the time of completion.

(*w*) Sect. 3, sub-sect. (5).
(*x*) Smith *v.* Watts, 4 Drew. 338.
(*y*) Sect. 3, sub-sects. 4 and 5.

Property held on lives.

On the sale of an estate held on lives, the vendor must supply the purchaser with the requisite evidence in proof of the existence and correct ages of the *cestuis que vie*.

(C) *As to tithes, enfranchised copyholds, enclosure allotments, exchanges.*

Title to tithes.

In the absence of stipulation, the title to tithes or tithe rent charge held as a lay property must commence with the original grant from the Crown, and then the title should be taken up and regularly deduced for a period of forty years previous to the time of sale (*z*).

Enfranchised copyholds.

In the case of copyholds which have been enfranchised, the purchaser was, before the recent Act, entitled to call for the production, not only of the copyhold title, but also of the title of the lord of the manor down to the period of the enfranchisement, unless the enfranchisement was under the Copyhold Acts (*a*). But it is now provided by the Conveyancing Act, 1881, that, under a contract to sell and convey enfranchised copyhold, the purchaser shall not have the right to call for the title to make the enfranchisement (*b*).

On the sale of property formerly copyhold which has been enfranchised the particulars or conditions should except from the sale the minerals and other rights reserved by the Copyhold Acts to the lord of the manor (*bb*).

Allotments.

In the absence of express stipulation, on the purchase of allotments under an Inclosure Act, the title to the property in respect of which the allotment is made must be deduced down to the period of the award, and if the allotment is made in respect of all his lands generally, and he holds lands under different titles, all the titles must be shown ; and such allotments are freehold, copyhold, or leasehold, according to the tenure of the land in respect of which the allotment is made (*c*).

(*z*) It seems doubtful whether sections 1 and 2 of the Vendor and Purchaser Act. 1874, are applicable to a contract for sale of tithe-rent charge.

(*a*) Kerr *v.* Pawson, 25 Beav. 394.

(*b*) Sect. 3, sub-sect. (2).

(*bb*) Upperton *v.* Nickolson, L. R. 6 Ch. 436.

(*c*) 8 & 9 Vict. c. 118, sect. 94.

Where the property sold has been the subject of a common law exchange made previously to the 31st of December, 1844, the vendor, in the absence of express stipulation, must show a title not only to such lands, but also to the lands given in exchange (*d*). But where an exchange is made under the powers of the General Inclosure Act, 1845 (*e*), the title to the land given in exchange is transferred to the land taken in exchange, and consequently the title to be deduced to a purchaser in such a case is the title to the land given in exchange, up to the date of such exchange, and afterwards the title to the land taken in exchange. Exchanges.

(D) *As to incumbrances which cannot be discharged.*

If the property is subject to any incumbrance which cannot be discharged, the conditions should provide for this defect in the title. All the facts connected with such incumbrance should be accurately stated; and, if it is not likely to be enforced, it may be sufficient to bind the purchaser to make no objection on that account, and in other cases, it may be expedient to offer an indemnity to the purchaser, and to provide that he shall be satisfied therewith: but it is very important that the terms and nature of the indemnity should be clearly stated. In the absence of special contract, a purchaser cannot be compelled to take a defective title with an indemnity, nor can a vendor be compelled to give an indemnity (*f*). When property liable to charges which cannot be paid off.

In some cases it may be necessary or desirable to apply to the Court to have the land discharged from an incumbrance under sect. 5 of the Conveyancing Act, 1881. That section enables the Court, on the sale of land subject to any incumbrance whether immediately payable or not, and on the application of any party to a sale, to direct or allow payment into Court, in case of an annual sum charged on the land, or of a Power of Court to provide for incumbrances, and to free land therefrom.

(*d*) But see now 8 & 9 Vict. c. 106, sect. 4.

(*e*) 8 & 9 Vict. c. 118, sect. 147.

(*f*) Balmanno *v.* Lumley, 1 V. & B. 224; Paton *v.* Brebner, 1 Bligh, 66; Aylett *v.* Ashton, 1 My. & Cr. 105; Bainbridge *v.* Kinnaird, 9 Jur. 862.

capital sum charged on a determinable interest in the land, of such amount as, when invested in Government securities, the Court considers will be sufficient, by means of the dividends thereof, to keep down or otherwise provide for that charge, and in any other case of capital money charged on the land, of the amount sufficient to meet the incumbrance and any interest due thereon; but in either case there must also be paid into Court such additional amount as the Court considers will be sufficient to meet costs and other contingencies, and thereupon the Court may declare the land to be freed from the incumbrance and may make any order for a conveyance or vesting order proper to give effect to the sale.

(E) *As to stamping of documents.*

Purchaser may require deeds to bear proper stamp.

A purchaser is entitled to require that all the title deeds bear the proper stamp. If, therefore, any deed is unstamped or insufficiently stamped, the conditions should provide that the expense of stamping shall be borne by the purchaser, if he requires it to be done (*g*).

(F) *As to identification of parcels.*

Identification.

It is a necessary part of the deduction of a good title to provide satisfactory evidence of the identity of the parcels. To do this completely is often difficult, so that some provision qualifying the purchaser's right in this respect is generally introduced. In a case where it was provided "that no further evidence of identity shall be required than what is afforded by the abstract or the documents therein abstracted," and the descriptions in the documents differed among themselves and from the descriptions in the particulars of sale, the purchaser was held entitled to further proof of identity (*h*). And in another case, where it was provided "that the purchaser shall not require any further proof of identity than is furnished by the title deeds themselves," Kindersley,

(*g*) See Whiting to Loomes, 14 Ch. D. 822.

(*h*) Flower *v.* Hartropp, 6 Beav 476.

V.-C., observed, "I am of opinion that under this condition, if the deeds do not show identity the purchaser cannot call for any other evidence; but that, on the other hand, the contract is in effect that the deeds shall show identity, so that if they do not, a good title is not made" (*i*).

(G) *As to time for sending in requisitions and conditions enabling vendor to rescind, on account of objections taken.*

Effect of condition for making objections within a given time.

It is a common and proper condition that a purchaser shall make all his requisitions and objections within a given time, and that all objections not made within that time shall be considered to be waived. Such a condition applies only from the delivery of a *perfect* abstract; *i.e.* an abstract which sets out with sufficient fulness every instrument which forms part of the vendor's title, and states every material fact (*j*). It follows that an objection may be raised after the prescribed period arising out of any evidence called for within that time (*jj*), or in respect of matters discovered *aliunde* (*k*). Nor will the condition be binding when the title is manifestly bad on the face of the abstract, *e.g.* where the vendor is a trustee, and the time for sale has not arrived (*l*). If a vendor does not deliver the abstract within the time specified by the conditions, the purchaser will not be bound to send in his objections within the time limited for that purpose (*m*).

When the abstract is perfect.

An objection to the title could not be taken because there are incumbrances affecting the estate, or outstanding interests, if the vendor can *require* them to be paid off and got in (*n*). But the abstract is imperfect if the concurrence of the incumbrancers, or of any third party,

(*i*) Curling *v.* Austin, 2 D. & Sm. 129, 135.

(*j*) Oakden *v.* Pike, 11 Jur. N. S. 666; Blacklow *v.* Laws, 2 Hare, 40.

(*jj*) Blacklow *v.* Laws, *ubi supra.*

(*k*) Ward *v.* Dickson, 5 Jur. N. S. 345.

(*l*) Want *v.* Stallibrass, 8 Exch. 175.

(*m*) Upperton *v.* Nickolson, L. R. 6 Ch. 436.

(*n*) Townsend *v.* Champernown, 1 Y. & J. 449; Avarne *v.* Brown, 14 Sim. 303.

whose consent is necessary, cannot be required (*o*). In *Sidebottom* v. *Barrington* (*p*), the Master of the Rolls said, "I apprehend a question of conveyance arises in this way:—Where an interest is vested in a party to secure a right, the satisfaction of which right entitles the party who has sold the estate to call for a conveyance, then the Court considers it a question of conveyance only; but I think it has never gone further than that. If the estate be vested in a person, not for the purpose of securing a right, but for the purpose of enabling that person to perform a duty to others, then until that duty has been performed there can be no right to call for a conveyance. So, also, the abstract is complete if it shows that the vendor can acquire the fee; as, for instance, by executing a disentailing assurance, although he may not actually be entitled to the fee at the date of the contract, or at the delivery of the abstract." In *Savory* v. *Underwood* (*q*), the conditions provided that the abstract should be delivered by a certain day, and the vendor agreed to deduce a good title. The estate at the time of sale was subject to two mortgages, but the mortgagees had not received the usual six months' notice of redemption, and some of them were dead, so that the letters of administration had to be taken out to one of them. These and other matters rendered it impossible for the vendor to convey on the day mentioned for the completion of the purchase, and it was decided at law that this did not amount to a defect of title.

Recovery of deposit, &c.

If a purchase goes off on account of a defect of title the purchaser may recover the deposit, with interest from the time of payment, as well as all his costs in investigating the title and in searching for judgments, &c. (*a*). The purchaser, moreover, would seem in such case to have a lien on the estate for the deposit (*b*).

Condition enabling the

It is now, however, a common condition that the vendor may annul the sale on the purchaser raising any

(*o*) Sug. V. & P. 352; 2 Moll. 583; Lewin *v.* Guest, 1 Rus. 325.
(*p*) 3 Beav. 524.
(*q*) 23 Law T. R. 141.
(*a*) Pounsett *v.* Fuller, 17 C. B. 660; Sikes *v.* Weld, 7 Jur. N. S. 1280.
(*b*) Wythes *v.* Lee, 3 Drew. 396.

objection or requisition which the vendor shall be unable or unwilling to remove, and that in such case the vendor shall return the deposit, but without interest, and that the purchaser shall have no claim on the vendor for the expenses of investigating the title, or other expenses. Such a condition is construed strictly, and it has been decided that the right of rescinding is waived, if the vendor expresses his willingness, or enters into correspondence with a view to answer objections (*c*). If, however, in the face of such a condition, a purchaser insists upon a requisition, after being informed that the vendor is unable to comply with it, the vendor may rescind the sale by notice, and such notice need not give the purchaser a time within which to waive his requisition (*d*). These decisions have led to the practice of introducing into the condition the words "notwithstanding any attempt to remove the same," or words to the like effect. On the other hand, a vendor cannot make use of a condition of this nature for the purpose of getting rid of the duty which attaches to him upon the rest of the contract of making out the title. He is therefore bound to give the best answer he can to the purchaser's requisitions, and it is then for the purchaser to say whether he will accept such title as the vendor can give him (*e*). In *Greaves* v. *Wilson* (*f*), the purchaser required the concurrence in the conveyance of a mortgagee by under-lease, and it was held that notwithstanding the condition, the vendor was bound to procure such concurrence. In *Nelthorp* v. *Holgate* (*g*), the vendor put up an estate for sale, knowing that his mother had a life interest therein, and it was held that he could not avail himself of the condition to rescind, and that the purchaser was entitled to a specific performance of the contract, with compensation in respect of the life interest. In *Hoy* v. *Smythies* (*h*), there was this condition, and also a condition that misdescriptions

vendor to rescind in case of objections made.

(*c*) Tanner *v.* Smith, 10 Sim. 410; Morley *v.* Cook, 2 Hare, 106.

(*d*) Duddell *v.* Simpson, L. R. 2 Ch. 102.

(*e*) Turpin *v.* Chambers, 29 Beav. 104.

(*f*) 25 Beav. 290. See *In re* Jackson *v.* Ockshott, 14 Ch. D. 851.

(*g*) 1 Coll. 203.

(*h*) 22 Beav. 510.

should not annul the sale but be the subject of compensation, and it was held that the condition as to rescinding did not apply to a misdescription (*i*). But in a case where this condition occurred, and the purchaser objected that certain minerals under the land sold belonged to the lord of the manor, but claimed the right to specific performance with compensation, the Court held that this was an objection to the title and not a misdescription, and that the vendors had a right to rescind (*k*).

It has been held that a vendor cannot avail himself of this condition in a case where he fails to show any title at all (*kk*).

II. *Conditions relating to the completion of the purchase.*

Day for completing the purchase.

The conditions should name the day on which the purchase is to be completed.

When time is of the essence of the contract.

In equity time is held to be of the essence of the contract only in cases of strict stipulation or of necessary implication (*l*). The cases of strict stipulation are where the parties introduce a clause expressly stating that time is to be of the essence of the contract (*m*). The cases of necessary implication are where the circumstances of the case require it, as where the property sold is required for some immediate purpose, or where the property is of a determinable or precarious nature, or where the purchase is made for the residence of the purchaser, and the vendor contracts to deliver possession by a certain day (*n*). But although time was not originally an essential part of the contract, either party may, by a proper notice, bind the other to complete within a reasonable time to be specified in such notice, and if the party receiving such notice do not complete

(*i*) See Paynter *v.* Newby, 11 Hare, 26; Cordingley *v.* Cheeseborough, 3 Giff. 496.

(*k*) Mawson *v.* Fletcher, L. R. 6 Ch. 91.

(*kk*) Bowman *v.* Hyland, 8 Ch. D. 588.

(*l*) Parkins *v.* Thorold, 16 Beav. 59; Hudson *v.* Temple, 29 Beav. 536; Roberts *v.* Berry, 3 De G. M. & G. 291; Patrick *v.* Milner, 2 C. P. Div. 342.

(*m*) Webb *v.* Hughes, L. R. 10 Eq. 281.

(*n*) Tilley *v.* Thomas, L. R. 3 Ch. 61.

within the time specified, equity will not assist him to enforce specific performance of the contract. But if the Court sees that the means exist of completing within a reasonable time, and considers the time given by the notice insufficient, it will not give effect to such notice (*o*).

As to interest on purchase-money.

In the absence of express stipulation the purchaser is liable to pay interest on the purchase-money from the day fixed for completion, and is entitled from the same time to receive the rents; but by providing himself with the money and giving notice that it is lying idle, he may free himself from the payment of interest, where the delay is not occasioned by his own default (*p*). The rate of interest is generally 4 per cent. (*q*).

Usual condition as to payment of interest.

It is usual to insert a condition making the purchaser liable to the payment of interest, if *from any cause whatever* the purchase is not completed on the appointed day (*r*). In *De Visme* v. *De Visme* (*s*), there was this condition, and also a condition that the abstract should be delivered at a certain time. The vendor did not deliver an abstract at the time fixed, and it was held that the purchaser was liable to interest only from the time a good title was shown. But this decision, if not overruled, has at all events been much qualified by more recent cases, and it is now settled that where the delay is occasioned by the state of the title, and is not wilful on the vendor's part, the condition applies and interest is payable (*t*). Thus in *Bannerman* v. *Clark* (*u*), the purchaser was held liable to pay interest under this condition, where two days before the time appointed for completion the vendor died, having devised the

(*o*) Walker *v.* Jefferys, 1 Hare, 341; Benson *v.* Lamb, 9 Beav. 502; Nott *v.* Ricard, 22 Beav. 307; Southcomb *v.* Bishop of Exeter, 6 Hare, 213; Parkin *v.* Thorold, 16 Beav. 59; Wells *v.* Maxwell, 32 Beav. 550; 33 L. J. Ch. 44.

(*p*) Dyson *v.* Hornby, 4 De G. & Sm. 481; Regent's Canal Company *v.* Ware, 23 Beav. 575. See Ballard *v.* Shutt, 15 Ch. D. 122.

(*q*) Wallis *v.* Sarrell, 5 De G. & Sm. 429.

(*r*) See Kershaw *v.* Kershaw, L. R. 9 Eq. 56.

(*s*) 1 Mac. & G. 336; Weddall *v.* Nixon, 17 Beav. 160; Robinson *v.* Skelton, 12 Beav. 363.

(*t*) Sherwin *v.* Shakspeare, 5 De G. M. & G. 517; Vickers *v.* Hand, 26 Beav. 630; Rowley *v.* Adams, 12 Beav. 476; Wallis *v.* Sarrell, 5 De G. & Sm. 429; Storry *v.* Walsh, 18 Beav. 559; Litchfield *v.* Brown, 23 L. J. Ch. 176; Tewart *v.* Lawson, 3 S. & G. 307; Durham, D. & C., *Ex parte*, 2 Jur. N. S. 345.

(*u*) 3 Drew. 632.

estate to an infant, which rendered the suit necessary; and in another case where the title proved defective and a suit was necessary to rectify the defect, it was held that the condition applied (*a*). In a more recent case (*b*), a vendor entered into a contract for the sale of a moiety of an estate, and three years afterwards (viz. in 1857) filed a bill for partition, and died in the following year, leaving a will by which he devised his estates to his infant children. In 1861, the executors of the vendor revived the partition suit, and in the following year a decree for partition was obtained. Under this condition the purchaser was ordered to pay interest from the day on which the purchase was to be completed. "The state of the vendor's title," K. Bruce, L. J., observed, "was such that several years elapsed before the title could be completed. Several years passed after the time which had been fixed by the contract for completion; but the contract contained a clause which of late years has not been by any means uncommon. It has been for several years settled, that as a general rule the state of the title and difficulties respecting the title do not exempt the purchaser from liability to that clause. The vendor may be in a sense wrong in not having his title ready at the time specified; but I repeat it has notoriously been already settled that the mere existence of difficulties as to the title justifying the purchaser in refusing to complete until they are removed, does not exempt him from that clause as to interest. There must be, I might almost say, some serious misconduct on the part of the vendor to exempt the purchaser from liability to interest."

As to custody of deeds on completion.

Upon the completion of the purchase, the vendor is bound to deliver to the purchaser all deeds and documents of title in his possession relating to the property sold, unless they also relate to other property of the vendor, in which case, however small may be the value of the property retained, the vendor is entitled under the Vendor and Purchaser Act, 1874, to keep them (*c*).

(*a*) Lord Palmerston *v.* Turner, 33 L. J. Ch. 457.
(*b*) Williams *v.* Glenton, L. R. 1 Ch. 200.
(*c*) Sect. 2, rule 5.

Where the vendor retains possession of any document, the purchaser may require an attested or other copy thereof to be delivered to him, but the expense of making such copy must be paid by him in the case of any sale made after the 31st Dec. 1881 (*d*). Expense of copies given to purchaser of deeds retained.

The purchaser is entitled to a covenant for the production of documents not delivered to him (other than wills or instruments on record), or under the new Act (*e*) to an acknowledgment of his right to their production, which covenant or acknowledgment should be entered into or given by the vendor or other the person holding the documents. If, however, the vendor is unable to procure a legal covenant for production, or an acknowledgment equivalent thereto, such inability is not, under the new law, an objection to the title in case the purchaser will, on completion, have an equitable right to the production of the documents (*f*). What covenants for production a purchaser entitled to.

It is apprehended that a vendor retaining deeds, whether he is a beneficial owner, or a trustee for sale, is, under the recent Act, bound to give to the purchaser an undertaking for safe custody, as well as an acknowledgment, the practice having been to include such an undertaking in the covenant for production. It will be observed that both the acknowledgment and undertaking are binding on the individual holder of the deeds so long only as he has the possession or control of them (*g*). Undertaking for safe custody of deeds.

The Vendor and Purchaser Act, 1874, provides that such covenants for production as the purchaser can and shall require shall be furnished at his expense, but the vendor is to bear the expense of perusal and execution on behalf of himself and other necessary parties other than the purchaser (*h*). Expense of covenants for production, by whom borne.

On the sale of an estate in lots, where the conditions are silent as to the custody of the deeds, the purchaser of the lot which is the largest in value is entitled to their custody ; but under a condition that the purchaser Custody of deeds on sale in lots.

(*d*) Conveyancing Act, 1881, sect. 3, sub-sect. 6.
(*e*) Sect. 9.
(*f*) Vendor and Purchaser Act, 1874, sect. 2, rule 3.
(*g*) Conveyancing Act, sect. 9, subsects. (2) and (9).
(*h*) Rule 4.

of the largest lot shall have them, the purchaser of the largest lot in superficial area will be entitled to the deeds (*i*). Under a condition that the title deeds are to be delivered to the purchaser of the largest lot, the purchaser of the largest lot in value and extent is entitled to the custody of the deeds as against a purchaser of several lots whose aggregate value and extent exceed those of the largest lot (*k*). In a case where it was stipulated that the vendor should not be required to produce any deeds not in his possession, and that all deeds of covenant for production of deeds should be obtained *by* and at the expense of the purchaser, it was held the vendor was not bound to procure covenants for production from third parties holding the deeds and not in the hands of the vendor (*l*).

III. *Conditions relating to misdescriptions in the Particulars, and to compensation in respect thereof.*

What the particulars should state.

The particulars of sale should minutely and accurately describe the property which is the subject-matter of the sale. The tenure should be stated, and, if let to a tenant, the nature and terms of the tenancy, and the rent paid by him. If it is subject to any charge or obligation of any description, this also should be stated; in short, the particulars should contain all such information as is necessary to apprise the purchaser of the real nature of the property put up for sale. There must be no wilful concealment of anything which it is material for the purchaser to know, no ambiguity in the description which is likely to mislead him.

Rules of law and equity as to misdescription.

Before the Judicature Act came into operation a slight error in a material part of the description rendered a contract void at law; but courts of equity would often enforce specific performance, notwithstanding a misdescription, with an abatement of the purchase-money by way of compensation, at the suit either of the vendor or of the purchaser. The rules of equity are

(*i*) Griffiths *v.* Hatchard, 1 K. & J. 17.

(*k*) Scott *v.* Jackman, 21 Beav. 110.

(*l*) Gabriel *v.* Smith, 16 Q. B. 847; 20 L. J. Q. B. 386.

now the rules of every branch of the Supreme Court of Judicature.

Effect of usual condition as to misdescriptions.

It is usual, however, to make express provision for misdescriptions by a condition of sale. One in common use provides that misdescription in the particulars shall not annul the sale, but compensation shall be made in respect thereof by either party, as the case may require, the amount of such compensation to be settled by two referees or their umpire.

Division of the subject.

It will be convenient to consider—1st. What is such a misdescription as will entitle a purchaser *at least* to compensation. 2ndly. What is such a misdescription as will entitle a purchaser to rescind the contract altogether. And 3rdly. Whether in any and what cases a vendor can avail himself of a condition entitling him to compensation for misdescription.

1. *What is such a misdescription as will entitle a purchaser at least to compensation.*

Ordinary condition only applies to errors which would otherwise vitiate the contract.

It has been decided that the ordinary condition as to misdescriptions applies only to such errors as in the absence of the condition would vitiate the contract (*m*). In other words, if the error is such that in the absence of the condition the party complaining of it would nevertheless have been compelled to complete the purchase without compensation, the condition does not apply. It follows that in considering this part of the subject it is immaterial whether there is, or is not, the usual condition as to misdescriptions. If according to the true construction of the particulars the property is misdescribed, the purchaser is entitled to compensation ; in the one case, by the general principles of equity, in the other case, by virtue of the condition. If, however, according to the true construction of the particulars there is no misdescription, he cannot in either case claim compensation.

Error as to quantity.

Where the error is as to the quantity, the purchaser is, as a general rule, entitled to an abatement out of his

(*m*) Leslie *v.* Tomson, 9 Hare, 268.

purchase-money for so much as the quantity falls short of the representation. For though the land is not sold professedly by the acre, the presumption is that in fixing the price regard is had to the quantity which both suppose the estate to consist of, and therefore a rateable abatement of the price will probably leave both parties in nearly the same relative situation in which they would have stood if the quantity had been originally known. In other words, the quantity is, as a general rule, to be considered as a material and substantial part of the description, and an error as to it is a misdescription. But this rule does not apply to a case where it appears that the purchaser has made his calculation on some other basis—as where on a sale of woods described as containing two hundred and seventeen acres the real quantity proved to be twenty-six acres less, but it appeared that the purchaser had been furnished with a gross valuation of the wood on the basis of which he had purchased, it was held that he was entitled to compensation for the twenty-six acres, but only on so much as the soil would be worth after deducting the value of the wood standing on it (*a*).

If purchaser is not deceived, he cannot claim compensation.

If it can be shown that the purchaser knew the real quantity, and therefore was not deceived by the error, he will not be entitled to compensation, but the *onus* lies on the vendor to show the purchaser's knowledge. Thus, where the particulars described the property as forty-six feet deep, whereas in fact it was only thirty-three feet deep, the purchaser was in the occupation of the premises, and it was therefore contended that he must have known the actual measurement. But the Master of the Rolls observed that he did not know that persons in the occupation of property were in the habit of measuring it, and decreed for the purchaser (*b*).

Effect of expressions "or thereabouts," "more or less," "by estimation."

The effect of such words as "or thereabouts," "more or less," added to the statement of quantity, seems not to have been absolutely fixed by decision. It is conceived, however, that they would only cover a small difference. But if the quantity is stated to be "by

(*a*) Hill *v.* Buckley, 17 Ves. 394. (*b*) King *v.* Wilson, 6 Beav. 124.

estimation" only, the description is rendered still more loose and uncertain. Thus, where the property was described as containing by estimation forty-one acres, more or less, and the real quantity was thirty-six acres, and there was no ground for imputing to the vendor knowledge of the real quantity, the purchaser was held not entitled to an abatement, but Sir W. Grant, M.R., intimated that if the vendor had known the true quantity, the use of such qualifying expressions would not protect him from the obligation of making it good (*c*). But there is a limit to the effect of even such expressions as "by estimation," as where a farm was described as containing "by estimation 349 acres, or thereabouts, be the same more or less," and there was a stipulation that the parties should not be answerable for any excess or deficiency in the quantity of the premises, and that such excess or deficiency, as the case might be, should not vacate or affect the contract, but the premises should be taken by the purchaser at the quantity above stated, whether more or less. The actual quantity was 100 acres less than that stated, and Sir W. Grant, M.R., observed, "I never can agree that such a clause, if there was nothing else in the case, can cover so large a deficiency as is alleged here" (*d*).

In a recent case (*e*) the property was described as containing an area of 7683 square feet or thereabouts, but in fact contained only 4350 square feet. There was a condition that "the measurements are presumed to be correct, but if any error be discovered therein, no allowance shall be made or required either way." The purchaser filed a bill for specific performance, with compensation, after the vendor had offered to rescind the contract. It was held that the purchaser could not claim compensation in the face of the condition expressly negativing his right to it, and that as he did not ask to have the contract rescinded, he must take the property without compensation. There can be little doubt that if in this case the bill had been by the vendor for

(*c*) Winch *v.* Winchester, 1 V. & B. 375.

(*d*) Portman *v.* Mill, 2 Russ. 570.

(*e*) Cordingley *v.* Cheeseborough, 3 Giff. 496 ; 31 L. J. Ch. 617.

specific performance, the Court would not have enforced the contract against the purchaser. In another case (*f*), the property was described as containing 753 square yards or thereabouts. The 14th condition of sale provided that "every lot is believed and shall be taken to be correctly described as to quantity and otherwise, and if any error, mis-statement, or omission in the particulars be discovered, the same shall not annul the sale, nor shall any compensation be allowed by the vendor or purchaser in respect thereof," and the 20th condition provided that every error or misdescription not covered by the 14th should be the subject of compensation. It turned out that the property contained only 573 square yards, and it was held that the 14th condition applied to small errors and inaccuracies, and not to so large a deficiency as 180 square yards, and consequently that the case came within the 20th condition, so as to entitle the purchaser to compensation.

Proper test to apply to qualifying expressions.

It is conceived that the proper test to apply to cases where the quantity is stated to be by estimation, or where other expressions are used with a view to protect the vendor from the obligation of making good a deficiency in quantity, is this. If a vendor states the quantity "by estimation," he virtually says, "I have not actually measured the property, but this is the quantity which it contains by reputation, or which according to the best of my judgment without having had recourse to measurement I believe it to contain;" and if in such a case a vendor acts *bonâ fide*, and the purchaser who has the opportunity of measuring it himself chooses not to do so, the principle of *caveat emptor* applies. If there is also a condition that no allowance shall be made in case of an error in quantity, the principle of *caveat emptor* applies still more strongly. But if the discrepancy is very great, it would be impossible to relieve the vendor from the imputation, either of wilful fraud in inserting a false description, or of such negligence of the ordinary duty of a vendor to acquire a knowledge of his property, as amounts to

(*f*) Whittemore *v.* Whittemore, L. R. 8 Eq. 603.

constructive fraud, and fraud in every case vitiates a contract.

Vendor bound to disclose latent defects.

An omission to state in the particulars as a part of the description of the property what in fairness the vendor ought to state is a misdescription entitling a purchaser to compensation. Thus a vendor is bound to disclose latent defects, *i.e.*, such defects as a purchaser using ordinary diligence cannot discover for himself, provided of course that the vendor is himself aware of them (*g*).

As to patent defects.

It is said that where the defect in a property is patent, viz., an object of sense such as a purchaser with ordinary diligence could discover for himself, the vendor is not bound to disclose it. Thus, where after the sale the purchaser discovered that there was a footpath over the land which materially affected the value, he was held to his contract without compensation (*h*). But this doctrine must be accepted with caution and subject to this qualification, that there must be no actual misrepresentation, and no studied concealment on the vendor's part. Thus, if in the above-mentioned case the land had been described by reference to a plan, and the plan had omitted to notice the footpath, it may be doubted whether the decision would have been the same, for in such case it might reasonably be contended that the omission on the plan was a misdescription calculated to deceive the purchaser.

Purchaser not entitled to compensation where description though correct, misleads him, there being no fraud on vendor's part.

Again, if property is described by its usual known description, and there is no fraud on the vendor's part, the purchaser is not entitled to compensation, though it may turn out that the property is not what from its description it might naturally be supposed to be. Thus, where a house at Brighton was sold as No. 39, Regency Square, and it was afterwards discovered that the house, though always named 39, Regency Square, was not actually in the Square, but in a side street communicating with the Square, this was held to be no misdescription (*i*).

(*g*) Mellish *v.* Motteux, 1 Pea. N. P. C. 156; Martin *v.* Cotter, 3 Jo. & Lat. 496; Lucas *v.* James, 7 Hare, 410.

(*h*) Oldfield *v.* Round, 5 Ves. 508.

(*i*) White *v.* Bradshaw, 16 Jur. 738.

Indefinite representations as to matters of opinion do not entitle purchaser to compensation—*secus* where the representation is as to a matter of fact.

Vague and indefinite representations with respect to what is a mere matter of opinion do not entitle a purchaser to compensation. Thus, where land was described as uncommonly rich water-meadow, and it turned out that though water-meadow it was imperfectly watered, the purchaser was not entitled to compensation (*k*). But if the vendor takes upon himself to make a specific and definite representation as to a matter of fact, he is bound to make it good. He must not make an inaccurate statement, and then say, "it was the duty of the purchaser before he bid to institute inquiries and correct mistakes and misdescriptions in the particulars," nor may he make an ambiguous statement by which a purchaser is likely to be deceived.

Instances of cases in which purchaser has been held entitled to compensation.

In accordance with the principles above laid down, the purchaser has been held entitled to compensation, either under the general rule of equity, or under a special condition making misdescriptions the subject of compensation, in the following cases, viz.:—

Where a house described as in good repair turned out to be very much out of repair, and the defect was not apparent except on minute investigation (*l*).

Where property was described as "well supplied with water," and it turned out that the supply was from water-works on payment of water rates, the Court being of opinion that the purchaser was led by the description to believe that there was a supply of water on the property itself (*m*).

Where property was described as customary leasehold, and renewable every twenty-one years on payment of a customary fine, and it turned out that there was no right of renewal (*n*).

Where on the sale of a manor it was stated that the fine was two years' improved value, and it turned out that this was not the case (*o*).

(*k*) Scott *v.* Hanson, 1 R. & M. 128.

(*l*) Dyer *v.* Hargrave, 10 Ves. 505. See also Grant *v.* Munt, Cooper, 173.

(*m*) Leyland *v.* Illingworth, 2 De G. F. & J. 248.

(*n*) Painter *v.* Newby, 11 Hare, 26.

(*o*) Hoy *v.* Smythies, 22 Beav. 510.

Where property was described as in the occupation of the owners of a certain colliery, their undertenants or workmen, but it was not stated (as the fact was) that such owners were entitled to use the cottages for their workmen rent free (*p*).

Where the land is subject to a reservation of mining or other rights, unless the Court is satisfied that there is no subject-matter for the reservation to act on, or that all legal right to exercise it has ceased (*q*).

Where the particulars of sale mentioned the premises as being then let at a rental of £30 per annum, and it was afterwards discovered that all the rates and taxes were by agreement payable by the landlord (*r*).

Purchaser not entitled to compensation if aware of the actual state of the property.

But if in cases of misdescription it can be shown that the purchaser was aware of the actual state of the property at the time of his purchase, he will not be allowed either to rescind the contract or to claim compensation (*s*).

2. *What is such a misdescription as will entitle a Purchaser to rescind the Contract.*

Extent to which equity has carried its jurisdiction of obliging a purchaser to take property with compensation.

The jurisdiction of equity to compel a purchaser (in the absence of stipulation) to take the property with an abatement of the purchase-money in respect of a misdescription, was, in some of the early cases, carried to a great length. Thus, on a contract to sell a house and wharf, the purchaser was compelled to take the house without the wharf though he alleged his object in purchasing was to carry on business at the wharf; and in another case, where the property was a house on the bank of the Thames, stated to be in the county of Essex, and it turned out to be in Kent, the contract was

(*p*) Brandley *v.* Plummer, 2 Drew. 427.

(*q*) Seaman *v.* Vawdrey, 16 Ves. 390; Martin *v.* Cotter, 3 Jo. & Lat. 496; Lyddall *v.* Weston, 2 Atk. 19. Whether, however, an outstanding right to minerals is a proper subject of compensation, see Powell *v.* Smithson, 20 L. T. 105.

(*r*) Bos *v.* Helsham, L. R. 2 Exch. 72. See also Barnes *v.* Wood, L. R. 8 Eq. 424.

(*s*) Farebrother *v.* Gibson, 1 De G. & J. 602. See Cato *v.* Thompson, 616.

enforced against the purchaser, though he stated that his object in purchasing was to be a freeholder of Essex and not a churchwarden of Greenwich. But these cases have been disapproved of (*t*), and the principle was thus stated by Lord Erskine, in *Halsey* v. *Grant*: "Where one party would be foiled at law but the other party can have the reasonable substantial benefit of his contract, compensation shall be admitted, but not where the effect will be to put on the purchaser something constitutionally different to that for which he contracted (*u*).

A similar rule applies where there is the usual condition making misdescriptions a matter of compensation. Thus, in *Flight* v. *Booth* (*x*), Tindal, C.-J., observed: "It is extremely difficult to lay down from the decided cases any definite rule which shall determine what mis-statement or misdescription in the particulars shall justify a rescission of the contract, and what shall be a ground of compensation only. All the cases concur in this, that where the mis-statement is wilful or designed, it amounts to a fraud, and fraud vitiates the contract altogether. Where there is no fraud, we think it a safe rule to adopt that where the misdescription is on a material and substantial point so far affecting the subject of the contract that it may be reasonably supposed that but for such misdescription the purchaser would not have entered into the contract at all, the contract is avoided altogether, and the purchaser is not bound to resort to the claim of compensation. Under such a state of facts the purchaser may be considered as not having purchased the thing which is really the subject of the sale" (*y*).

Instances where purchaser was held entitled to rescind.

The following are cases in which it has been held that the purchaser was entitled to rescind the contract, and was not bound to accept compensation:

Where an estate was described as freehold and it turned out to be leasehold for 4,000 years (*z*).

(*t*) See Drewe *v.* Hanson, 6 Ves. 678; Halsey *v.* Grant, 13 Ves. 78.

(*u*) See Baskcomb *v.* Beckwith, L. R. 8 Eq. 100.

(*x*) 1 Bing. N. C. 370; 4 L. J. (N. S.) C. P. 66.

(*y*) Dimmock *v.* Hallett, L. R. 2 C. A. 21. See also Denny *v.* Hancock, L. R. 6 Ch. Ap. 1.

(*z*) Crewe *v.* Corp, 9 Ves. 368.

Where, on a sale of a leasehold house the particulars stated that the lessee was restricted from carrying on "offensive trades or the trade of a coffee-house keeper or working hatter," and it turned out that the lease prohibited not only offensive but also a great number of inoffensive trades (*a*).

Where the subject-matter of the contract was described as a "free public-house," and it turned out that the lease contained a proviso that the lessee should take all his beer from a particular brewery (*b*).

Where the property was described as seven houses on a *ground* rent lease at forty guineas per annum, and it turned out that they were let on lease at a *rack* rent of forty guineas (*bb*).

Where property was sold as copyhold and it was proved that part of it was freehold (*c*). The result would of course be the same if property put up as freehold proved to be copyhold.

Where property sold as freehold was formerly copyhold and had been enfranchised under the Copyhold Acts, which reserved the minerals to the lord of the manor (*cc*).

Where a lot was described as a first-rate building plot of land, and it turned out that it was subject to a right of way of which no notice was taken in the particulars and plan (*d*).

Where the property was subject to easements materially affecting its enjoyment (*dd*).

Where a house was described as brick-built, and it was proved to be built partly of brick and partly of timber, and some parts were composed only of lath-and-plaster (*e*).

Where the particulars described the property as containing sixty-five acres of fine oak timber trees,

(*a*) Flight *v.* Booth, 1 Bing. N. C. 370; 4 L. J. (N. S.) C. P. 66.
(*b*) Jones *v.* Edney, 3 Camp. 285.
(*bb*) Stewart *v.* Alliston, 1 Mer. 26.
(*c*) Ayler *v.* Cox, 16 Beav. 23.
(*cc*) Upperton *v.* Nickolson, L. R. 6 Ch. 436.
(*d*) Dykes *v.* Blake, 4 Bing. N. C. 463; 7 L. J. (N. S.) C. P. 282.
(*dd*) Shackleton *v.* Sutcliffe, 1 Dr. & Sm. 609.
(*e*) Powell *v.* Double, MS. cited Sug. V. & P. 23.

the average size of which approached sixty-five feet, and the size was in fact considerably below that average (*f*).

Where property was described as No. 58, on the north side of Pall Mall, and opposite Marlborough House, and it turned out that the house was in fact not in Pall Mall, but was situate behind No. 57, Pall Mall, having its entrance by a separate passage through the ground floor of No. 57 (*g*).

Where the property was described as freehold ground rents, and it turned out that some of the rents were rents covenanted to be paid by the lessees of houses for the right of using a public pleasure ground, and not freehold ground rents within the meaning of the particulars (*h*).

Where, on a sale of redeemed land-tax, it was stated to be charged on three houses, and it turned out that the whole amount was not charged on the three houses, but consisted of three smaller sums each charged on one house (*i*).

Where no title can be made to a portion of the property described which is an essential part (*k*).

Where the contract was for the sale of a freehold residence, and it turned out that it was encumbered with certain covenants on the part of the grantee his heirs and assigns (*l*).

Result of above cases.

It may be stated as the result of the above cases that a purchaser is entitled to rescind the contract, whether there is or is not a condition as to misdescription, (1.) if the mis-statement on the part of the vendor is wilful, (2.) if the effect of making the purchaser complete would be to put upon him something constitutionally different from that for which he contracted, (3.) if the misdescription is such that it may be reasonably supposed that but

(*f*) Lord Brooke *v.* Roundthwaite, 5 Hare, 298.

(*g*) Stanton *v.* Tattersall, 1 Sm. & Giff. 529.

(*h*) Evans *v.* Robins, 33 L. J. (N. S.) Ex. 68.

(*i*) Cox *v.* Coventon, 31 Beav. 378.

(*k*) Dobell *v.* Hutchinson, 3 Ad. & Ell. 355.

(*l*) Phillips *v.* Caldcleugh, L. R. 4 Q. B. 159. In this case the vendor refused to produce the deed containing the covenants, and it did not appear what they were. See also *Re* Higgins and Hitchman's Contract, 21 Ch. D. 95.

for such misdescription he would not have entered into the contract at all, (4.) if the misdescription is of a nature not susceptible of compensation.

3. *Whether in any and what cases a vendor can avail himself of a condition giving him compensation for misdescriptions.*

When vendor can claim compensation for misdescription.

The common condition as to misdescriptions provides for the payment of compensation to the vendor as well as to the purchaser. In determining whether in any given case the vendor can avail himself of this condition it must be considered whether the misdescription is one which in the absence of the condition would have entitled him to be relieved from the contract.

It is the duty of the vendor to describe accurately the property which he offers for sale, and he will as a general rule be bound by the description. But if it can be shown that the mistake on the vendor's part was *bonâ fide*, and made under such circumstances as to be excusable, equity will relieve him. Thus, if by mistake he inserts a description which includes the whole of a property when it was his *bonâ fide* intention to describe a portion only, it would be inequitable to make him sell the whole for what he intended to be the price of part only, particularly if the purchaser himself considered that he was only buying the part (*m*). And in a case where upon a sale in lots there was a condition that in case of any mistake in the description of the property compensation should be given or taken, as the case might require, and one of the lots contained about twenty acres more than the quantity mentioned in the particulars, and it appeared that the particulars had been prepared from some previous particulars, and from the report of a surveyor prepared on a former occasion, it was held that the purchaser could not enforce the contract in the face of the mistake unless he was willing to adopt the condition by which compensation was prescribed to be made for any excess in the quantity of

(*m*) Calverley *v.* Williams, 1 Ves. 210. See also Baxendale *v.* Seale, 19 Beav. 601.

the land taken (*n*). It will be observed that in the above case it was merely decided that the purchaser could not insist on a conveyance of twenty acres more than he bargained for without paying for the excess, but if the purchaser had elected to give up the property rather than pay more than his original purchase-money, it is conceived that he might have done so. In other words, it is conceived that a vendor would not be entitled under this condition as to compensation to compel a purchaser to complete the purchase and pay for the excess of quantity unless it could be shown that the purchaser was aware, and the vendor was unaware, of the excess at the time of the sale.

IV. *Conditions relating to other matters, and Conditions generally.*

As to retracting a bidding.

It is usual to provide in the conditions that no person shall retract his bidding; but Lord St. Leonards, though he originally suggested the condition, doubts whether it could be enforced (*o*).

When vendor may employ a bidder.

If it be announced either by the particulars or publicly at the time of sale that the sale is to be without reserve, the sale is of course vitiated by a person being employed by the vendor to bid (*p*); but formerly, if a sale had been advertised generally without any statement as to its being without reserve, it was generally supposed that a vendor might, in equity though not at law, employ one person to bid, in order to prevent the estate being sold at an under value (*q*). But by the 30 & 31 Vict. c. 48, it is enacted that after the 15th July, 1867, whenever a sale by auction of *land* would be invalid at law by the employment of a puffer, the same shall be so in equity also (*r*); and it is further provided that the particulars, or conditions of sale by auction of land shall state

30 & 31 Vict. c. 48.

(*n*) Leslie *v.* Tompson, 9 Hare, 268.

(*o*) Sug. V. & P. 11.

(*p*) Thornett *v.* Haines, 15 M. & W. 372; 15 L. J. Ex. 230; Meadows *v.* Tanner, 5 Mad. 34.

(*q*) Bramley *v.* Alt, 3 Ves. 620; Conolly *v.* Parsons, *id.* 625, n.; Smith *v.* Clarke, 12 Ves. 477; Twining *v.* Morrice, 2 Bro. C. C. 326; Woodward *v.* Miller, 2 Coll. C. C. 279. But see the observations of Lord Cranworth in Mortimer *v.* Bell, L. R. 1 C. A. 10.

(*r*) Sect. 4.

whether it will be sold without reserve or subject to a reserved price, or whether a right to bid is reserved, and that if the land is stated to be sold without reserve or to that effect, it shall not be lawful for the seller to employ any person to bid, or for the auctioneer to take knowingly any bidding from such person; and that when any such sale is declared to be subject to a right for the seller to bid, the seller, or any one person in his behalf, may bid at such auction in such manner as he may think proper (*s*).

Deposit.

It is also usual on sales by auction to provide that the purchaser shall pay a deposit, and if the deposit is large in amount it may in some cases be desirable to provide for its investment during the interval between the sale and the completion of the purchase, and in that event the vendor will be entitled to any increase, and must bear any loss, in the value of the investment (*t*).

Investment of deposit.

As to timber.

If on a sale the timber is be paid for separately, the conditions of sale should provide for the terms on which it is to be taken by the purchaser, and should specify what trees shall be paid for as timber. Wood is not timber unless it is of twenty years' growth; the term *timber* includes oak, elm, and ash, and by local custom, birch, beech, and other trees, and sometimes pollards (*u*).

What is timber.

As to apportionment of rent on sale in lots.

When a property which is subject to a lease at an entire rent is sold in lots, or a part only of such property is sold, provision must be made by the conditions for the apportionment of the rent, and if the tenants' concurrence in the apportionment cannot be obtained, the purchaser should be precluded from taking any objection on that account.

Written or printed conditions cannot be verbally varied.

It may be observed that written or printed conditions of sale cannot be verbally varied at the time of sale by

(*s*) Sects. 5, 6. See Gilliatt *v.* Gilliatt, L. R. 9 Eq. 60.

(*t*) Burroughes *v.* Brown, 9 Hare, 609. See also St. Paul *v.* Birmingham, &c., Railway Company, 11 Hare, 305.

(*u*) Dart, 122, 4th Ed.; Duke of Chandos *v.* Talbot, 2 P. Wms. 606; Aubrey *v.* Fisher, 10 East, 446. As to what are saleable underwoods, see King *v.* Inhabitants of Ferrybridge, 1 B. & C. 375.

the auctioneer, and parol evidence will not be admitted in equity on the part of the plaintiff to vary the written contract, although the purchaser agrees to abide by the conditions and declarations made at the sale (*x*). But any personal information which the purchaser may have received would be a ground for receiving parol evidence, and using the same as a defence against a specific performance (*y*). Fraud, mistake, or surprise, are respectively grounds for receiving parol evidence in defence to an action for specific performance, but if none of these circumstances exist, evidence cannot be offered to contradict, explain, or vary the written contract (*z*). The particulars of sale should give an accurate description of the property, and no reliance should be placed by the vendor on statements made at the sale (*a*).

Where parol evidence will be received.

Condition as to forfeit of deposit.

The last condition of sale usually provides that if the purchaser fails to comply with the conditions, he shall forfeit his deposit, and the vendor may resell. It may be observed that even in the absence of this condition, a purchaser failing to complete, forfeits his deposit (*b*), and this is so where the purchaser becomes bankrupt and the trustee disclaims under the 23rd section of the "Bankruptcy Act, 1869" (*c*).

Conditions subject to which trustees may sell.

When a sale is made by trustees or other persons holding a fiduciary character, they must be careful to enter into no condition which the state of the title does not require, and the authority which is often given to them by the deed or instrument creating the trust, and which is now conferred on trustees having a power of sale by statute (*d*), to insert in the contract or conditions of sale any special stipulations as to title or otherwise, would not enable a trustee to enter into any unnecessary or improperly depreciatory conditions, and the *cestui que trust*, however small his interest may be, might set

(*x*) Gunnis *v.* Erhart, 1 H. Bl. 289; Powell *v.* Edmunds, 12 East, 6; Higginson *v.* Clowes, 15 Ves. 516.

(*y*) Ogilvie *v.* Foljambe, 3 Mer. 65; Clowes *v.* Higginson, 1 V. & B. 524.

(*z*) Manser *v.* Back, 6 Hare, 443.

(*a*) Torrance *v.* Bolton, L. R. 8 Ch. 118.

(*b*) Depree *v.* Bedborough, 4 Giff. 479.

(*c*) *Ex parte* Barrell, L. R. 10 Ch. 512.

(*d*) Conveyancing Act, 1881, sect. 35.

aside the sale, so long as any part of the purchase-money remains unpaid (*e*). On the other hand it is apprehended that the title of a purchaser completing *without notice* that the conditions were unjustifiable could not be called in question, and that in that case the remedy would be in damages against the trustee. It has been held that a trustee is authorized, without any special authority for the purpose, to stipulate by the conditions that the vendor shall be at liberty to rescind the contract in case objections are taken to the title which he is unable to remove (*f*). A decree was made for specific performance in a case where, on a sale by a trustee who had no express power to give receipts, he stipulated that his receipts should be deemed conclusive discharges, and that the purchaser should not require the concurrence of the heir or *cestui que trust* (*g*).

Vendor or purchaser can obtain opinion of Judge in Chambers.

A vendor or purchaser of real or leasehold estate, or their representatives respectively, may at any time apply in a summary way to a Judge in Chambers, in respect of any requisitions or objections, or claim for compensation, or any other question arising out of or connected with the contract (not being a question affecting the validity of the contract) and obtain the decision of the Judge thereon, and also as to the costs of the application (*h*).

What conditions necessary, where title is registered under Land Transfer Act.

When the title to land has been registered under the "Land Transfer Act, 1875," no special condition will be necessary if the registration is with an absolute title. But if the registration is with a possessory or qualified title only, *i.e.* without prejudice to estates arising before the date of registration, or before a certain specified date, the purchaser will be entitled to carry the investigation back for forty years according to the ordinary rule, and to preclude him from so doing, a special condition will be necessary.

(*e*) Dance *v.* Goldingham, L. R. 8 Ch. 912.

(*f*) Hobson *v.* Bell, 2 Beav. 17; Falkner *v.* Eq. Rev. Int. Soc., 4 Drew. 352.

(*g*) Wilkinson *v.* Hartley, 15 Beav. 183.

(*h*) Vendor and Purchaser Act, 1874, sect. 9. See *In re* Burroughs, 5 Ch. D. 601.

No. I.

OF FREEHOLDS OR COPYHOLDS IN ONE LOT.

CONDITIONS *of* SALE *of* FREEHOLD *or* COPYHOLD PROPERTY *in* ONE LOT.

Highest bidder to be purchaser, and as to advance on biddings.

I. THE highest bidder shall be the purchaser and if any dispute shall arise between two or more bidders the property shall be put up again at the last undisputed bidding. No person shall advance at each bidding less than £—— [*or* the sum which shall be fixed by the auctioneer at the time of the sale], and no bidding shall be retracted. The vendor reserves the right to bid.

Deposit.

II. THE purchaser shall immediately after the sale pay to the auctioneer [*or* to Mr. ——, the vendor's solicitor,] a deposit of £—— per cent. upon the amount of his purchase-money, and sign an agreement to complete the purchase according to these conditions.

Timber to be paid for at a valuation.

[IIA. IN addition to the amount of his bidding at the sale, the purchaser shall pay for all timber and timber-like trees, tellers, pollards, and saplings on the property, down to the value of one shilling per stick inclusive, at a valuation to be made in manner following (that is to say):—Each party shall appoint a valuer, and give notice thereof by writing to the other party within fourteen days from the day of the sale. The valuers thus appointed shall, before they proceed to act, appoint by writing an umpire, and the two valuers or (if they disagree) their umpire shall make the valuation. If either party shall neglect to appoint a valuer or to give notice thereof to the other party for the space aforesaid, the valuer appointed by the other party shall make a final valuation alone (*a*). In the following conditions the expression "the remainder of the purchase-money" includes the amount of the aforesaid valuation.]

(*a*) Sometimes the timber is valued before the sale, in which case the amount of the valuation is stated in the particulars, and the condition will then be as follows:—

In addition to the amount of his bidding at the sale, the purchaser shall pay for the timber and other trees on the property the amount stated in the particulars.

III. The remainder of the purchase-money shall be paid and the purchase shall be completed on the —— day of —— next at the office of Mr. —— (the vendor's solicitor), and if from any cause whatever the purchase shall not be completed on that day, the purchaser shall pay to the vendor interest after the rate of £5 per cent. per annum on the remainder of the purchase-money from that day until the completion of the purchase. The purchaser shall be entitled to the possession [*or* the receipt of the rents and profits] of the property from the said —— day of —— next, all outgoings up to that day being cleared by the vendor, and all current rents and outgoings shall if necessary be apportioned for the purposes of this condition (*aa*).

Of freeholds or copyholds in one lot.

As to the completion of the purchase.

IV. The vendor will, within —— days from the day of sale, deliver to the purchaser or his solicitor, an abstract of title to the property, such abstract to commence with an indenture, dated, &c. (*b*).

Delivery of abstract and commencement of title.

V. The purchaser shall not require any evidence of the identity of the property as described in the particulars with the property described in the abstracted documents, other than a statutory declaration which will be furnished to him if he requires it, at his own expense, that the property has been held consistently with the title shown by the abstract during the last twenty years.

Identity.

VI. The property is sold subject to existing tenancies, and to all easements (*c*) (if any) affecting the same.

Tenancies and easements.

(*aa*) Under a condition in this form as to "outgoings" on the sale of leaseholds an apportioned part of the current rent from the last quarter day up to the time for delivering up possession must be paid by the vendor. Lawes *v.* Gibson, L. R. 1 Eq. 135. See also Midgely *v.* Coppock, 4 Ex. Div. 309.

Outgoings.

(*b*) Insert after the 4th condition any special stipulations which the state of the title may require. For forms of such conditions, see *infrà*. The conditions which were formerly usually inserted, making recitals in deeds twenty years old evidence of the facts recited, and throwing on the purchaser the expense of producing deeds and procuring other evidence not in the vendor's possession, are no longer necessary, these matters being now provided for by statute. See the Vendor and Purchaser Act, 1874, s. 2, rule 2, and the Conveyancing Act, 1881, s. 3, subs. (6). As to the construction which has been put upon the clause in the first-named Act with reference to recitals, see Bolton *v.* London School Board, 7 Ch. D. 766, which decided that a recital in a conveyance only twenty-four years old, to the effect that the vendor was seised in fee simple, precluded the purchaser from requiring the vendor to carry the title further back. It is submitted that this decision cannot be sustained.

Recitals in documents to be evidence.

(*c*) Add here if necessary, "quit rents and other incidents of tenure."

OF FREEHOLDS OR COPYHOLDS IN ONE LOT.

Errors of description.

VII. The quantities stated in the particulars shall be presumed to be correct, and an error as to quantity, if any such shall be found, shall neither annul the sale nor entitle either party to compensation on account thereof. If any other mistake shall be found in the particulars before the completion of the purchase (*d*), the same shall not annul the sale; but a fair compensation shall be made in respect thereof to or by the purchaser, as the case may require, the amount to be settled, in case of difference, by two referees, one to be appointed by each party, or their umpire; and if either party shall fail to appoint a referee for the space of ten days after notice shall have been given to him by the other party so to do, the referee appointed by the other party may make a final decision alone (*e*).

(*Or the following.*)

VIIA. The description of the property in the particulars is believed to be correct; but if any error shall be found therein the same shall not annul the sale, nor shall any compensation be allowed in respect thereof (*f*).

(*d*) As to the importance of the words "before the completion of the purchase," see Bos *v.* Helsham, L. R. 2 Exch. 72; *In re* Turner *v.* Skelton, 13 Ch. D. 130; Jones *v.* Clifford, 3 Ch. D. 779; but see Manson *v.* Thacker, 7 Ch. D. 620; Allen *v.* Richardson, 13 Ch. D. 524.

(*e*) It is suggested that the following proviso might be properly added to the end of the above condition, with a view to prevent either party from being called on to pay compensation, when it would be more to his interest to rescind the sale:—

Provided always that the party from whom compensation is claimed may, instead of submitting thereto at any time within the period above allowed him for the appointment of a referee, rescind the sale by a notice in writing given to the other party; and in such case the purchaser shall receive back his deposit without interest or costs. But the party making the claim may, at any time within seven days from the receipt of the notice to rescind, withdraw such claim, in which case the notice to rescind shall be deemed to be withdrawn also.

If the above proviso is added, the words "except as hereinafter mentioned" should be introduced in the condition in the text, after the words "shall not annul the sale."

Observations on condition

(*f*) It has been held that a condition in the form given above (VIIA), notwithstanding the generality of its language, will only cover slight

VIII. All objections and requisitions in respect of the title, or the abstract, or particulars, or anything appearing therein respectively, shall be stated in writing and sent to the vendor's solicitor within —— days from the delivery of the abstract, and all objections and requisitions not sent within that time shall be considered to be waived. If any objection or requisition shall be made and insisted on which the vendor shall be unable or unwilling to remove or comply with, the vendor shall be at liberty (notwithstanding any intermediate negotiation on the subject of such objection or requisition or attempts to remove or comply with the same), by notice in writing to the purchaser, to rescind the sale; in which case the purchaser shall receive back the deposit without interest or costs. But the

of freeholds or copyholds in one lot.

Time for making requisitions,

and power to rescind in certain cases.

immaterial errors (Whittemore *v.* Whittemore, L. R. 8 Eq. 603), and it is apprehended, moreover, that such errors must be in the nature of patent defects; and bearing in mind that patent defects (where there is no actual mis-statement) do not as a general rule confer a right of relief, even in the absence of stipulation, the practical operation of the condition would seem to be confined to slight errors in quantity. If so, it seems a fair objection to its use, that its language so inaccurately describes its legal operation. Moreover, it is open to the observation that it may be used *against* the vendor, and may probably be held to preclude him from claiming relief in some cases of *bonâ fide* mistake on his part, where otherwise he would have been able to do so.

excluding compensation for misdescriptions.

It has been said that trustees are not justified in allowing compensation for their own errors, and that a Court of Equity will not act upon a clause to that effect in the conditions (Dart, V. & P. 129). This must be taken to mean, not that it is a breach of trust to sell subject to a condition allowing compensation for errors, but that such a condition will not be permitted to operate so as to prejudice the *cestui que trust*—in other words, to enable the purchaser to get the property for a less sum than he would have paid if the error had not occurred (White *v.* Cuddon, 8 Cl. & F. 760). But if the mistake is one fairly admitting of compensation, *e.g.*, a deficiency in quantity, where the purchaser may be supposed to have bought by the quantity, or an understatement of the amount of an annual outgoing, so that a proportionate abatement of the purchase-money will reduce it to the same amount as it may fairly be supposed would have been paid if the particulars had been correct, such an abatement will be made as well where the vendor is a trustee as when he is beneficial owner. (Hill *v.* Buckley, 17 Ves. 394.)

Whether trustees for sale can allow compensation for misdescriptions.

It is the duty of a trustee selling to describe the property correctly, and any negligence on his part in this respect by which his *cestuis que trust* are prejudiced, is a breach of trust. But inasmuch as a mistake may find its way into the particulars from inadvertence, a trustee is justified, indeed it is his duty, to make the same provision to meet such a case as a prudent owner selling on his own account would do; and as a condition making misdescriptions a subject for compensation is a usual one, being considered on the whole to be for the vendor's benefit, it follows that such a condition may be properly used by a trustee, particularly as Courts of Equity will not allow a purchaser to obtain by means of it an unfair advantage over the *cestui que trust.* (White *v.* Cuddon, *ubi supra.*)

OF FREEHOLDS OR COPYHOLDS IN ONE LOT.

purchaser may, within seven days after receiving the notice to rescind, withdraw the objection or requisition, in which case the notice to rescind shall be deemed to be withdrawn also.

Vendor to make assurances.

IX. Upon payment of the residue of the purchase-money at the time and place aforesaid, the vendor shall make and execute to the purchaser a proper assurance of the property, such assurance to be prepared by and at the expense of the purchaser, and to be left by him for execution at the office aforesaid, not less than seven days before the said —— day of ——; [and the getting in of all outstanding estates, terms, and interests (if any) shall be at the expense of the purchaser (*g*)].

(*If any of the deeds are retained by the vendor, the following may be added*) (*h*).

The said assurance shall include an acknowledgment by the vendor of the purchaser's right to production and delivery of copies of the title deeds retained by the vendor as relating to other property, and an undertaking for their safe custody.

(*If the sale is made by a trustee for sale, the following may be added.*)

The vendor is a trustee for sale, and the concurrence of the persons beneficially interested in the purchase-money shall not be required.

Vendor's power to resell on purchaser's default.

X. If the purchaser shall fail to comply with these conditions, his deposit money shall be forfeited to the vendor, who shall be at liberty to proceed to another sale either by public

(*g*) This will be inserted, where the state of the title requires it.

Vendor retaining deeds must give statutory acknowledgment and undertaking.

(*h*) Where the deeds relate to other property of the vendor, he is entitled to retain them, and will be bound to covenant for their production, or give an acknowledgment as above, so that the condition only expresses what would otherwise be implied. As under the recent Act an acknowledgment binds each individual holder of the deeds so long only as he has the possession or control of them, the qualification which has been generally inserted, limiting the liability of the covenantor when he is a trustee or mortgagee is no longer necessary. It is considered that the vendor ought to give an undertaking for safe custody as well as an acknowledgment, and that a trustee for sale should also do so, the undertaking being (like the acknowledgment) limited by the Act so as to bind each individual holder of the deeds so long only as he has possession or control of them.

auction or private contract, with or without notice to the purchaser at the present sale, and the deficiency, if any, occasioned by such second sale, together with all charges attending the same, shall immediately after such sale be made good by the defaulter at this present sale, and in case of non-payment of the same, the whole shall be recoverable by the vendor as and for liquidated damages, and it shall not be necessary for the vendor to tender a conveyance.

OF FREEHOLDS OR COPYHOLDS IN ONE LOT.

Memorandum to be annexed to the Particulars and Conditions.

MEMORANDUM. At the Sale by auction made this day, of the property described in the above particulars, A. B. of —— was the highest bidder for, and was declared the purchaser of the said property, at the price of £——; and the said A. B. has paid to C. D., as agent for and on behalf of ——, (*i*) the vendor, the sum of £—— by way of deposit, and in part-payment of the purchase-money; and he hereby agrees to complete the purchase, according to the above conditions, and the said C. D., as the vendor's agent, hereby confirms the said sale, and acknowledges the receipt of the said deposit.

C. D. (*auctioneer, or vendor's solicitor*) for the vendor.
A. B. (*purchaser*).

(*i*) The name of the vendor should be inserted in the contract before it is signed.

No. II.

OF LEASEHOLDS IN ONE LOT.

CONDITIONS *of* SALE *of a* LEASEHOLD HOUSE [*and* TENANT'S *fixtures*] *in* ONE LOT [*the fixtures to be taken at a valuation*].

I., II. (*As in Precedent No. I., supra*, p. 36.)

Tenant's fixtures.

[IIA. IN addition to the amount of his bidding at the sale the purchaser shall pay for the tenant's fixtures in and about the premises at a valuation to be made in manner following (that is to say): the vendor shall appoint one valuer and the purchaser shall appoint another valuer, and each party shall make such appointment by writing and give notice thereof to the other party within fourteen days from the day of sale. The valuers thus appointed shall, before they proceed to act, appoint by writing an umpire, and the two valuers, or if they disagree, their umpire, shall make the valuation. If either party shall neglect to appoint a valuer, or to give notice thereof to the other party for the space aforesaid, the valuer appointed by the other party shall make a final valuation alone. In the following conditions the expression "the remainder of the purchase-money" includes the amount of the aforesaid valuation.]

III. THE remainder of the purchase-money shall be paid, and the purchase completed on the —— day of —— next, at the office of Mr. ——, the vendor's solicitor; and if, from any cause whatever, the purchase shall not be completed on that day, the purchaser shall pay to the vendor interest after the rate of £5 per cent. per annum on the remainder of the purchase-money from that day until the completion of the purchase. The purchaser shall be entitled to the possession [*or* the receipt of the rents and profits] of the property from the said —— day of —— next, and shall from the same day pay all outgoings (including the rent reserved by the lease). All current rents and outgoings shall, if necessary, be apportioned for the purpose of this condition.

Delivery of abstract and commencement of title.

IV. THE vendor will within —— days from the day of sale, deliver to the purchaser or his solicitor an abstract of title to the property, such abstract to commence with the lease under

which the vendor holds, which lease, or a copy thereof, will be produced at the time of sale, and may be inspected the day before the sale, at the office of the vendor's solicitor, and the purchaser shall be deemed to have notice of all its contents. The production of the receipt for the last payment of rent which shall have become due under the lease shall be deemed conclusive evidence that all the covenants and conditions in the lease have been observed and performed up to the day of completion, or that all breaches thereof (if any) have been waived. OF LEASEHOLDS IN ONE LOT.

If the property is held by an underlease, and the vendor cannot procure the production of the superior lease.

IVA. THE vendor will, &c., (*deliver abstract*) such abstract to commence with the underlease under which the vendor holds, which underlease, or a copy thereof, will be produced at the sale, and may be inspected the day before the sale, at the office of the vendor's solicitor; but the purchaser shall not require the production of the superior lease. Commencement of title when property held by underlease.

(*Or if the vendor can produce the superior lease.*)

IVB. THE vendor will, &c. (*deliver abstract*) such abstract to commence with the underlease under which the vendor holds, which underlease, or a copy thereof, and also a copy of the superior lease will be produced at the sale, and may be inspected the day before the sale at the office of the vendor's solicitors. Another form.

(*Remaining conditions as in Precedent No. I., so far as they are applicable.*)

No. III.

OF FREEHOLDS WITH REGISTERED TITLE.

CONDITIONS *of* SALE *of* FREEHOLDS *where the* VENDOR *has a* REGISTERED TITLE *under the* LAND TRANSFER ACT, 1875.

I., II., III. (*The same as in Precedent No. I.*)

(*If the vendor is the first registered proprietor with a possessory title only.*)

Where vendor is first registered proprietor with a possessory title only.

IV. THE vendor is the first registered proprietor with a possessory title only of the premises offered for sale, the date of registration being the —— day of —— 18—. No evidence of title prior to the registration shall be required, and the purchaser shall assume that, at the date of registration, no estate, right, or interest adverse to or in derogation of the vendor's title was subsisting or capable of arising.

(*Or if the vendor is a transferee of the first registered proprietor.*)

Where vendor is transferee of first registered proprietor.

IVA. THE vendor is the registered proprietor with a possessory title only of the premises offered for sale by transfer from the first registered proprietor, the date of such first registration being the —— day of —— 18—. No evidence of title prior to the first registration shall be required, and the purchaser shall assume that at the date of such registration, no estate, right, or interest adverse to or derogatory of the title of the first registered proprietor was subsisting or capable of arising.

(*Or if the vendor is registered proprietor with a qualified title.*)

Where vendor has a qualified title.

IVB. THE vendor is the registered proprietor with a qualified title (estates, rights, and interests arising before the —— day of —— 18—, being excepted from the effect of registration). No evidence of title prior to the said —— day of —— 18—, shall be required, and the purchaser shall assume that no estate, right,

or interest adverse to or in derogation of the registered title was subsisting or capable of arising on the said —— day of —— 18—. OF FREEHOLDS WITH REGISTERED TITLE.

(*If the vendor has an absolute registered title no special condition is necessary.*)

V. The property is sold subject to the existing tenancies and to all easements, quit rents, and other incidents of tenure, if any, affecting the same.

VI., VII. (*Conditions as to errors of description and vendor's power to resell in case of purchaser's default, as in Precedent No. I., suprà*, pp. 38, 40.)

No. IV.

CONDITIONS *of* Sale *of* Leaseholds *where the vendor has a* Registered Title *under the* Land Transfer Act, 1875. OF LEASEHOLDS WITH REGISTERED TITLE.

I., II., III. (*The same as in Precedent No. I.*)

IV. The vendor is the registered proprietor of the leasehold premises offered for sale, but without any declaration of the title of the lessor to grant the lease. The receipt for the last payment of rent which shall have become due under the lease shall be accepted by the purchaser as conclusive evidence that all the covenants and conditions contained in the lease, and to be performed by the lessee, have been performed up to the completion of the purchase. The nature of such covenants and conditions may be ascertained by an inspection of an office copy of the lease, which will be produced at the time of the sale. Last receipt of rent to be sufficient evidence of performance of covenants.

V., VI. (*Errors in particulars, and power to vendor to resell, see Precedent No. I., suprà*, pp. 38, 40.)

No. V.

OF PROPERTY IN LOTS.

CONDITIONS *of* SALE *of* PROPERTY *in* LOTS.

Highest bidder to be purchaser, and as to advance on biddings.

I. THE highest bidder shall be the purchaser; and if any dispute shall arise between two or more bidders, the lot in dispute shall be put up again at the last undisputed bidding. No person shall advance at each bidding less than £—— [*or*, the sum to be fixed by the auctioneer at the time of sale], and no bidding shall be retracted. The vendor reserves the right to bid.

Deposit.

II. EVERY purchaser shall, immediately after the sale, pay to the auctioneer [*or*, to Mr. ——, the vendor's solicitor] a deposit of £—— per cent. on the amount of his purchase-money, and sign an agreement to complete his purchase according to these conditions.

Timber to be paid for at a valuation.

[IIA. IN addition to the amount of his bidding at the sale, the purchaser of each lot shall pay for all timber and timber-like trees, pollards and saplings on such lot, down to the value of 1*s*. per stick inclusive, at a valuation to be made in manner following (that is to say): each party shall appoint a valuer, and give notice thereof by writing to the other party within fourteen days from the day of sale. The valuers thus appointed shall, before they proceed to act, appoint by writing an umpire, and the two valuers, or (if they disagree) their umpire, shall make the valuation. If either party shall neglect to appoint a valuer, or to give notice thereof to the other party for the space aforesaid, the valuer appointed by the other party shall make a final valuation alone. In the following conditions the expression "the remainder of the purchase-money" includes the amount of the aforesaid valuation.]

As to the completion of the purchase.

III. THE remainder of the purchase-money of each lot shall be paid, and the purchase thereof shall be completed on the —— day of —— next, at the office of the said ——, and if from any cause whatever the purchase of any lot shall not be completed on that day, the purchaser thereof shall pay to the vendor interest after the rate of £5 per cent. per annum on the remainder of the purchase-money from that day until the com-

pletion of the purchase. The purchaser of each lot shall be entitled to the possession [or the receipt of the rents and profits] of the lot purchased by him from the said —— day of —— next, all outgoings up to that day being cleared by the vendor, and all current rents and outgoings shall be apportioned for the purpose of this condition. OF PROPERTY IN LOTS.

IV. The vendor will, within —— days from the day of sale, deliver to the purchaser of each lot, or his solicitor, an abstract of title to the lot purchased by him (*k*). The title shall commence, as to lot 1, with, &c., as to lot 2, with, &c., (*and so on as to all the lots*) (*l*). Delivery of abstract and commencement of title.

V. No purchaser shall require any other evidence of the identity of the lot purchased by him with any of the property described in the abstracted documents than a statutory declaration, which will be furnished to him if he requires it at his own expense, that the property has been held consistently with the title shown by the abstract for the last twenty years. Identity.

VI. The several lots are sold subject to the existing tenancies, and all easements, quit rents, and other incidents of tenure (if any) affecting the same. And where two or more lots are included in one tenancy the rent shall be apportioned between such lots as specified in the particulars, and the tenant shall not be required to concur in or consent to such apportionment. Easements, and apportionment of rent.

VII. The quantities of the lands forming the several lots are believed and shall be taken to be correctly stated in the particulars, and no compensation shall be allowed for an error in quantity, if any such be found. If any other mistake in the particulars shall be discovered before the completion of the purchase, a fair compensation shall be made in respect thereof to or by the purchaser as the case may require; the amount to be settled, in case of difference, by two referees, one to be appointed by each party, or their umpire; and in case either party shall fail to appoint a referee for the space of ten days after notice shall have been given to him by the other party so to do, the referee Errors in particulars.

(*k*) By sect. 3, sub-sect. (7) of the Conveyancing Act, 1881, it is provided that on a sale of any property in lots, a purchaser of two or more lots held wholly or partly under the same title shall not have a right to more than one abstract of the common title, except at his own expense. A purchaser of several lots entitled to one abstract only.

(*l*) Insert after the 4th condition any other special stipulations which the state of the title may require. For forms of special conditions, see *infrà*.

OF PROPERTY IN LOTS.

appointed by the other party shall make a final decision alone.

(*Or the following, if preferred.*)

VIIa. The description of the several lots in the particulars is believed and shall be deemed to be correct, and if any error shall be found therein the same shall not annul the sale, nor shall any compensation be allowed in respect thereof (*m*).

Time for making requisitions,

VIII. All objections and requisitions in respect of the title or the abstract, or particulars, or anything appearing therein respectively, shall be stated in writing, and sent to the vendor's solicitor within —— days from the delivery of the abstract; and all objections and requisitions not sent within that time shall be considered to be waived. If any objection or requisition shall be made and insisted on which the vendor shall be unable or unwilling to remove or comply with, the vendor shall be at liberty (notwithstanding any intermediate negotiation in respect thereof, or attempts to remove or comply with the same), by notice in writing to the purchaser by whom such objection or requisition shall be made, to rescind the sale: in which case the purchaser shall receive back the deposit without interest or costs, but the purchaser may within seven days after receiving the notice to rescind, withdraw the objection or requisition, in which case the notice to rescind shall be deemed to be withdrawn also.

and power to vendor to rescind in certain cases.

Vendor to make assurances.

IX. Upon payment of the residue of the purchase-money at the time and place aforesaid, the vendor shall make and execute to the purchasers proper assurances of their respective lots, such assurances to be prepared by and at the expense of the purchasers, and to be left by them respectively for execution at the office aforesaid, not less than seven days before the said —— day of —— next, [and the getting in of all outstanding estates, terms, and interests (if any) shall be at the expense of any purchaser requiring the same.] (*Add if the vendor is a trustee for sale.*) The vendor is a trustee for sale, and the concurrence of the persons beneficially interested in the purchase-money shall not be required.

Custody of deeds.

X. Such of the documents of title in the vendor's possession as relate to more than one lot shall be delivered to the pur-

(*m*) See *suprà*, pp. 38, 39, note (*h*).

chaser of the largest part in value of the lots to which the same relate, if all such lots shall be sold, but otherwise shall be retained by the vendor. The purchaser to whom such documents shall be delivered, or the vendor retaining the same shall give to the purchasers of the other lots to which the same relate, an acknowledgment of their right to production thereof and to delivery of copies thereof, and an undertaking for their safe custody. Every acknowledgment and undertaking under this condition shall be prepared by and at the expense of the person to whom it is given, and shall be perused by or on behalf of the person giving the same at his own expense (*q*). OF PROPERTY IN LOTS.

XI. If any purchaser shall fail to comply with these conditions, his deposit money shall be forfeited to the vendor, who shall be at liberty to proceed to another sale, either by public auction or private contract, with or without notice to the purchaser at the present sale, and the deficiency (if any) occasioned by such second sale, together with all charges attending the same, shall, immediately after such sale, be made good by the defaulter at this present sale; and, in case of nonpayment of the same, the whole shall be recoverable by the vendor, as and for liquidated damages; and it shall not be necessary for the vendor to tender a conveyance. Power vendor to resell in case of default by purchaser.

Memorandum to be annexed to the Particulars and Conditions.

MEMORANDUM. At the Sale by auction, made this day, of the property comprised in the above particulars, A. B., of ——, was the highest bidder for, and was declared the purchaser of lot ——, at the price of £——, and the said A. B. has paid to C. D., as agent for and on behalf of —— (*s*), the vendor, the sum of —— by way of deposit, and in part payment of the purchase-money; and he hereby agrees to complete the purchase according to the above conditions: and the said C. D., as the vendor's agent, hereby confirms the said sale and acknowledges the receipt of the said deposit.

C. D. (*auctioneer, or vendor's solicitor*)
for the vendor.
A. B. (*purchaser*).

(*q*) For other conditions as to custody of deeds, see Condition No. XI. *infrà*.
(*s*) The name of the vendor should be inserted in the contract before it is signed.

No. VI.

OF FREEHOLDS, COPYHOLDS, AND LEASEHOLDS IN LOTS.

CONDITIONS *of* SALE *of a* LARGE ESTATE, *comprising* FREEHOLDS, COPYHOLDS, *and* LEASEHOLDS, *in* LOTS, *the* VENDORS *being* TRUSTEES.

Biddings.

I. THE highest bidder shall be the purchaser, and if any dispute shall arise as to the last or best bidder, the lot in dispute shall be put up again. No person shall at any bidding advance less than £—— [*or*, the sum to be fixed by the auctioneer at the time of the sale], or retract his bidding. The vendors reserve the right to bid.

Payment of purchase-money, and completion of purchase.

II. EVERY purchaser shall, immediately after the sale, pay a deposit of £—— per cent. in part of his purchase-money, and sign an agreement to pay the remainder and complete his purchase according to these conditions.

IIA., III. (*As in Precedent No.* V., *suprà*, p. 46.)

Delivery of abstract.

IV. THE vendors shall, within —— days from the day of sale, deliver to every purchaser, whose purchase-money (exclusive of the value of the timber) shall amount to £500 or upwards, or his solicitor, an abstract of title to the lot or lots purchased by him. No purchaser whose purchase-money (exclusive as aforesaid) shall be less than £500, shall be entitled to an abstract at the vendor's expense, but he may have an abstract at his own expense, and may inspect at the office of —— a general abstract of title, comprising the lot or lots purchased by him.

Commencement of title.

V. The title to the several lots shall commence as follows: [*Here insert such special conditions as the state of the title may require. See infrà.*]

Condition as to leaseholds.

VI. As to such of the lots as are of leasehold tenure, no purchaser shall require the production of any lease or leases prior to the now existing lease thereof, or any copy of such prior lease or leases, the same having been from time to time surrendered to the lessors for the purposes of renewal. The existing lease or a copy thereof will be produced at the sale, and may be inspected at any time before the sale at the office of the vendor's solicitors, and the purchaser shall be deemed to have notice of all its contents. The production of the receipt for the last payment

of rent which shall have become due under the lease shall be deemed conclusive evidence that all the covenants and conditions in the lease have been observed and performed up to the day of completion, or that all breaches thereof (if any) have been waived. (*Remaining conditions as in last Precedent.*) OF FREEHOLDS, COPYHOLDS, AND LEASEHOLDS IN LOTS.

No. VII.

CONDITIONS *of* SALE *as to* REVERSIONARY INTERESTS *in* PERSONALTY, POLICIES, ANNUITIES, LIFE INTERESTS, &c.

OF REVERSIONARY INTERESTS, POLICIES, ANNUITIES, &c.

I. THE highest bidder shall be the purchaser, and if any dispute shall arise between two or more bidders, the lot in dispute shall immediately be put up again at the last undisputed bidding. No person shall advance less than £—— at each bidding, or retract his bidding. The vendor reserves the right to bid. Highest bidder. Advance.

II. EVERY purchaser shall, immediately after the sale, pay into the hands of the auctioneer a deposit of £—— per cent. in part of his purchase-money, and sign an agreement to pay the remainder, and complete the purchase according to these conditions on the —— day of —— next. Deposit.

III. THE purchase of each lot shall be completed on the —— day of —— next, and if from any cause whatever, any purchase shall not be completed on that day, the purchaser thereof shall pay interest on the remainder of the purchase-money after the rate of £5 per cent. per annum from that day until the completion of the purchase. Completion of purchase.

IV. THE vendor shall deliver to every purchaser, or to his solicitor, an abstract of the title to the lot or lots purchased by him within —— days from the day of sale; and every purchaser shall make his objections and requisitions (if any) in respect of the title to the lot or lots purchased by him, and send the same to the office of Mr. —— within —— days from the delivery of the abstract; and all objections or requisitions which shall not be made within the time above specified shall be taken to be waived; and in case any purchaser shall make any objection or requisition which the vendor shall Delivery of abstract.

OF REVERSIONARY INTERESTS, POLICIES, ANNUITIES, &c.

be unable or unwilling to remove or comply with, the vendor shall be at liberty, notwithstanding any intermediate negotiation on the subject of such objection or requisition or attempts to remove or comply with the same, by notice in writing to the purchaser, by whom such objection or requisition shall be made, to rescind the sale: in which case the deposit, without interest, shall be returned to the purchaser, who shall have no claim on the vendor for the expenses of investigating the title or other expenses, or for compensation.

Preparation and execution of assurance.

V. Upon payment of the remainder of the purchase-money at the time and place above mentioned, the vendor shall execute proper assignments and assurances to the several purchasers of the lots purchased by them respectively; such assignments and assurances to be prepared by and at the expense of the purchasers, and to be left by them at least —— days previous to the said —— day of —— next, at the office aforesaid, for execution by the vendor.

Reversions, policies, annuities, &c.

VI. The purchasers, on payment of the remainder of the purchase-money, agreeably to the third condition, shall be entitled to all advantages on the reversions and policies from the hour of sale, and to the current half-year's dividends, or the interest on annuities, life interests, &c.; and all premiums on policies falling due or becoming payable between the day of sale and the completion of the purchase are to be paid by the several purchasers thereof.

Title to be deduced to reversionary legacy.

VII. The title to lot —— shall commence with the will of A. B., late of ——, widow, under which the legacy mentioned in the particulars is derived, and by the trustees of whose will the same was paid into the Court of Chancery under the Trustees' Relief Act; but the vendor shall not be required to produce the probate of such will or any residuary or other accounts, or to prove that the reversionary interest forming the subject matter of lot —— has not been otherwise encumbered than as in the particulars appears.

Vendor not to be required t produce deeds not in his possession.

VIII. Every purchaser shall be entitled, at his own expense, to examine his abstract with such deeds and other documents as are in the vendor's possession; but the vendor shall not be bound to produce or procure the production of any deeds, wills, or other documents whatsoever, not in his possession, either for the examination or verification of the abstract or otherwise, nor

to procure attested or other copies of, or extracts from such deeds, wills, or other documents, nor to give any information in relation thereto; and the non-production of any such deeds, wills, or other documents, as are not in the vendor's possession, shall not be deemed an objection to the title. The vendor shall not be required to identify or otherwise prove by evidence not in his possession that the sum of stock,—the reversion to one third part of which forms lot —— of the particulars,—is the same as that given by the will of the said A. B., deceased; nor to produce evidence in support of any statements on which the respective policies may be respectively granted. OF REVERSIONARY INTERESTS, POLICIES, ANNUITIES, &C.

IX. If any mistake or omission shall be discovered in the description of the property, or any error whatever shall appear in the particulars, such mistake, omission or error shall not vitiate or annul the sale, but a compensation or equivalent shall be given or taken, as the case may require, to be settled by two referees or their umpire, each party within ten days after the discovery of the error and notice thereof being given to the other party to appoint one referee by writing; and in case either party shall neglect or refuse to nominate a referee within the time appointed, the referee of the other party alone may make a final decision: and if two referees are appointed, they shall nominate an umpire before they enter upon business, and the decision of such referees or umpire, as the case may be, shall be final. Errors in particulars and compensation.

X. If any purchaser shall fail to comply with these conditions, his deposit money shall be forfeited to the vendor, who shall be at liberty to proceed to another sale, either by public auction or private contract, with or without notice to the purchaser at this present sale, and the deficiency (if any) occasioned by such second sale, together with all charges attending the same, shall, immediately after such sale, be made good by the defaulter at this present sale; and in case of non-payment of the same, the whole thereof shall be recoverable by the vendor as and for liquidated damages; and it shall not be necessary for the vendor previously to tender an assignment to the purchaser or purchasers respectively. Vendor may re-sell in case of purchaser's default.

No. VIII.

OF AN ESTATE SOLD UNDER A DECREE.

CONDITIONS *as to an* ESTATE SOLD *under an* ORDER *of the* CHANCERY DIVISION OF THE HIGH COURT OF JUSTICE.

Advance.

I. No person is to advance less than £—— at any bidding, or retract a bidding.

Reserved bidding.

II. THE sale is subject to a reserved bidding, which has been fixed by the Judge to whose Court this cause is attached.

Purchaser to subscribe his name, &c.

III. THE purchaser is at the time of sale to subscribe his name and address to his bidding, and the abstracts of title and all written notices and communications and summonses are to be deemed duly delivered to and served upon the purchaser by being left for him at such address, unless or until he is represented by a solicitor.

Deposit.

IV. THE purchaser is at the time of sale to pay a deposit of £—— per cent. on the amount of his purchase-money to ——, the person appointed by the said Judge to receive the same.

The chief clerk to verify the result.

V. THE chief clerk of the said Judge will after the sale proceed to certify the result, and the —— day of ——, at —— o'clock in the —— noon, is appointed as the time at which the purchaser may, if he think fit, attend by his solicitor at the chambers of the said judge to settle such certificate. The certificate will then be settled and will in due course be signed and filed, and become binding without further notice or expense to the purchaser.

Delivery of abstract.

VI. THE vendor is, within —— days after such certificate has become binding to deliver to the purchaser or his solicitor

Time for delivery of objections.

an abstract of the title to the lot purchased by him, subject to the stipulations contained in these conditions, and the purchaser is within —— days after the actual delivery of the abstract to deliver at the office of ——, solicitor at —— in the county of ——, a statement in writing of his objections and requisitions (if any) to or on the title as deduced by such abstract: and upon the expiration of such last-mentioned time (and in this respect time is to be deemed of the essence of the contract), the title is

OF AN ESTATE SOLD UNDER A DECREE.

to be considered as approved of and accepted by the purchaser, subject only to such objections and requisitions (if any).

Timber to be valued and paid for.

VII. The purchaser is, in addition to the amount of his bidding at the sale, to pay the value of all timber and timber-like trees, tellers, and pollards on the property, down to 1*s.* per stick inclusive, the amount thereof to be ascertained by a valuation to be made in manner following (that is to say): each party, or his solicitor, is within —— days after the chief clerk's certificate has become binding, to appoint by writing one valuer, and give notice in writing to the other party of such appointment, and the valuers so appointed are to make such valuation, but before they commence their duty they are to appoint an umpire by writing, and the decision of such valuers, if they agree, or of such umpire if they disagree, is to be final, and in case the purchaser shall neglect or refuse to appoint a valuer, and give notice thereof in the manner and within the time above specified, the valuation is to be made by the valuer appointed by the vendor alone, and his valuation is to be final.

Payment of purchase-money on order.

VIII. The purchaser is under an order for that purpose to be obtained by him, or in case of his neglect by the vendor at the costs of the purchaser, upon application at the chambers of the said Judge, to pay the amount of his purchase-money (after deducting the amount paid as a deposit) together with the amount of the valuation under the 7th condition into the Bank of England, to the account of the Paymaster-General, to the credit of the cause —— *v.* ——, "the account of the produce of the real estates," on or before the —— day of ——, 188—, and if the same is not so paid, then the purchaser is to pay interest on his purchase-money, including the amount of such valuation, at the rate of £5 per cent. per annum from the said —— day of —— to the day on which the same is actually paid. Upon payment of the purchase-money in manner aforesaid, the purchaser is to be entitled to possession of such parts of the estate as are in hand, and to the rents and profits of such parts as are let, as from the —— day of ——, down to which time all outgoings are to be paid by the vendor (*u*).

Error in particulars.

IX. If any error or misstatement shall appear to have been made in the above particulars, such error or misstatement is

(*u*) Add, after the 8th condition, any special condition as to title or title deeds which the state of the title may require.

OF AN ESTATE SOLD UNDER A DECREE.

not to annul the sale nor to entitle the purchaser to be discharged from his purchase, but a compensation is to be made to or by the purchaser as the case may be, and the amount of such compensation is to be settled by the said Judge at Chambers.

Default of payment of purchase-money.

X. If the purchaser shall not pay his purchase-money at the time above specified, or at any other time which may be named in any order for that purpose, and in all other respects perform these conditions, an order may be made by the said Judge upon application at chambers for the re-sale of the property, and for payment by the purchaser of the deficiency (if any) in the price which may be obtained upon such re-sale, and all costs and expenses occasioned by such default.

No. IX.

CONDITIONS *of* Sale *of* Standing Timber.

OF STANDING TIMBER.

Highest bidder to be the purchaser.

I. The highest bidder shall be the purchaser, and if any dispute shall arise between two or more bidders, the lot in dispute shall be put up again or not at the discretion of the auctioneer, who is to be the sole arbitrator in such dispute. The auctioneer is to have the right of refusing any bidding, and of withdrawing, consolidating, or dividing any lots contained in the particulars of sale.

Purchaser to take each lot according to description and with all faults.

II. The vendor shall not be answerable for the description of the lot after the fall of the hammer. The purchaser must take it with all faults, errors of description or number, and be at all risks. No person to advance a less sum at each bidding than shall be named by the auctioneer, or retract his bidding, and the auctioneer shall be at liberty to bid once or oftener on each lot for the benefit of the vendor.

Payment of purchase-money.

III. The purchaser of each lot shall at the close of the sale, or of his bidding if required, pay into the hands of the auctioneer a deposit of twenty per cent. in part of his purchase-money, and give his name and place of abode, and shall also sign an agreement to complete the purchase according to these conditions, and each purchaser shall give the vendor his bill of seven months for the unpaid purchase-money for the oak, and his bill

OF STANDING TIMBER.

of four months for the unpaid purchase-money for the remainder of the timber, and each such purchaser shall, if required by the vendor or his agent, be provided with a responsible person or persons to join him in such bills respectively as aforesaid, such bills to be given to the auctioneer at the close of the sale, or within one week from the day of sale, the purchaser paying for the stamps, and not until the same shall be so given and executed, and such further security shall be given if required as hereinafter mentioned, shall the purchaser be allowed to enter on his lot or lots, or commence cutting the timber, and if he previously attempt to do so he shall be deemed a trespasser, and liable to pay to the vendor treble the amount of his purchase-money for such lot or lots, to be recovered as liquidated damages. Each purchaser shall at any time or times give further security if requested. The purchasers shall respectively pay to the auctioneer sixpence in the pound over and above the purchase-money for fees.

How the timber is to be felled and removed.

IV. The trees are to be felled with as much care as possible, and the bark and wood thereof to be properly stacked, and removed only by the usual roads, and the purchasers are to be accountable for all damage done to any of the remaining timber, or otherwise to the estate of the vendor, or to cattle browsing on the grounds and premises, no tree is to be rooted up without the sanction of the vendor or his agent being first obtained, and the purchaser before the trees are thrown shall sever and cut off such boughs as are necessary to prevent such damage, and if any workman shall be objected to by the vendor, the purchaser shall on application or notice being given him for this purpose discharge such workman from off the estate, and the purchaser shall forfeit £5 for every tree or sapling cut which has not been marked for sale. No dogs are to be taken on any part of the estate, either by the purchasers or their workmen. All the oak timber is to be removed from off the lands in dry or frosty weather, having regard to the season, on or before the —— day of ——, 18—, and the remainder of the said timber is to be removed and cleared away before the —— day of ——, 18—, except lots ——, which shall be removed before the —— day of ——, 18—. All lots remaining after the time before mentioned shall be forfeited to the vendor. Purchasers whose amounts shall not exceed £10 shall pay for the same on

OF STANDING TIMBER.

or before the —— day of ——, 18—. The whole of the tops shall be properly bundled immediately after the trees are felled, and shall be removed from off the lands within one month after such felling, and if not removed as aforesaid shall be forfeited.

When the timber is to be carried away, and how damage to be paid for.

V. THE purchasers shall not enter on any arable lands after the same shall be sown with corn, or upon any grass land after the same is laid up until mown, nor upon any young grass, turnips, or other crops, to carry away the timber, without the consent of the respective occupiers until the crops are respectively cleared, and the whole of the timber is to be removed only by the roads and gaps appointed by the vendor or his agent. No purchaser will be allowed to sink pits for the conversion of his timber on the estate without the consent of the proprietor or his agent. Any injury or damage done to the property of the vendor or his tenants shall be ascertained by the auctioneer or any person he may appoint, whose award or determination of damages shall be final. The specified number of trees on the catalogue annexed shall be taken as correct. The whole of the timber shall be felled by the respective purchasers at their own expense, except lots ——, which shall be felled by and at the expense of the vendor.

Condition as to paying for and clearing away pollards, saplings, &c.

VI. THE purchasers of the pollards, saplings, poles, hurdle-wood, and underwood, shall pay for the same at the close of the sale. The pollards, saplings, and poles shall be cleared off the premises by the —— day of ——, and the hurdlewood and underwood by the —— day of ——. The purchasers of the hurdlewood shall not cut any saplings that are marked, nor any saplings that are likely to become trees.

Provisions in case of bankruptcy of purchaser before payment of purchase-money, &c.

VII. No part of the timber, trees, wood, or bark shall be in anywise liable to be seized or taken by any person other than the vendor for the debts, or other engagements, if any, of the purchasers, until the whole of the purchase-money is paid, and satisfaction is made for damages as aforesaid, notwithstanding any bankruptcy of or any other thing whatsoever affecting the purchasers or any of them. The carriages used shall have broad wheels, and the usual roads shall not be deviated from but with the consent of the vendor or his agent.

Provisions for purchaser re-

VIII. IF any purchaser shall refuse or neglect to comply with the foregoing conditions, or attempt to remove any of the said

timber from off the lands and premises before the purchase-money is paid or security given as aforesaid, then the deposit money shall be forfeited to the vendor, who shall be at liberty by himself or his agent to follow and stop the timber wherever it may be found, and to resell the same by public auction or private contract, and the deficiency, if any, together with all expenses attending the same, shall be made good by the defaulter or defaulters at this present sale, and be recoverable as and for liquidated damages, but any increase of price shall belong to the vendor.

OF STANDING TIMBER.

Refusing to comply with previous conditions.

No. X.

SPECIAL CONDITIONS *as to* COMMENCEMENT *and* EVIDENCE *of* TITLE.

AS TO COMMENCEMENT OF TITLE.

I. THE title to lot —— shall commence with a general devise contained in the will of ——, who died in the year ——, and the purchaser shall assume that the testator was, at the time of his death, seised in fee simple of the said lot, [such seisin being recited or stated in subsequent documents].

Title to commence with general devise, seisin of testator being recited in subsequent deeds.

II. THE title to the property shall commence with a general devise contained in the will of ——,who died in the year 18 ——, and the purchaser shall assume the seisin in fee simple of the testator upon the faith of a statutory declaration which will be furnished to him at his own expense, that the testator was in the possession or receipt of the rents and profits of the property at the time of and for some time previously to his death, and that the persons deriving title under his said will, have been in such possession or receipt since his death and up to the present time.

Title to commence with general devise, seisin of testator to be proved by declaration of possession.

III. THE vendors are the trustees of the will of ——, who died in the year ——. The title shall consist of the said will and of several appointments of new trustees thereof, in which appointments as well as in the said will the real estate of the testator is referred to by a general description, and there is no specific description of the property now offered for sale. A statutory

Title to consist of will and appointments of new trustees containing general description only. Seisin to be evi-

AS TO COMMENCEMENT OF TITLE.

declaration will be furnished to the purchaser at his own expense that the property has been held consistently with the title derived under the will for the last 20 years and upwards, and such declaration shall be accepted by the purchaser as sufficient evidence that the testator was at his death seised in fee simple of the property.

denced by declaration.

With inclosure award.

IV. THE title to lot —— shall commence with the —— inclosure award, dated, &c., under which the same was allotted to ——, and the purchaser shall not be entitled to call for the production of, or to investigate or make any objection in respect of the title to the property, in respect of which such allotment was made, and such award shall be deemed conclusive evidence of the title to and tenure of the said allotment, and the validity and regularity of the award in all respects shall be presumed.

With exchange under inclosure award.

V. THE title to lot —— shall commence with the —— inclosure award dated —— under which the same was allotted to —— in exchange for other land, and the purchaser shall not be entitled to call for, or investigate, or make any objection in respect of the prior title to the said lot, or the title to the land given in exchange for the same, and the validity and regularity of the said award in all respects shall be presumed.

With statement in inclosure award.

VI. LOTS —— and —— appear in a terrier and map annexed to the —— inclosure award dated ——, and are therein mentioned to be old enclosures belonging to ——. Such terrier and map shall be deemed sufficient evidence of the seisin in fee simple of the said ——; and no earlier title to the said lots shall be required.

Presumption as to regularity of award.

VII. WHERE any part of the property appears on the abstract to have been purchased from the Commissioners under an Inclosure Act, the purchaser shall presume that the provisions and directions of the Act in relation to the sale by the Commissioners, and payment of the purchase-money, and also in relation to the making of the said property tithe free, have been duly complied with.

Commencement of title as to exchanges and allotments.

VIII. THE vendors shall not be required to produce or show the title to any lands taken in exchange by deed, or under any Act of Parliament or award anterior to the deed, Act of Parliament, or award, by or under which such exchanges or awards were made, or to call for the production or to make any objection in respect of the title to the property given in exchange, and

no evidence of the requisite consents to any such exchanges shall be called for or required; and as to allotments under any inclosure award, the title shall commence with the award, and the purchaser shall not be entitled to call for the production or to make any objection on account of the title to the property in respect of which such allotments or award may have been made, and such award shall be considered as conclusive evidence of the title to and tenure of such allotments, and the validity and regularity of such award shall in all respects be presumed. AS TO COMMENCEMENT OF TITLE.

IX. The property was formerly copyhold and was enfranchised in the year 18— under the Copyhold Acts, and the same is sold subject to the rights of the lord of the manor to the minerals thereunder and such other rights as are reserved to him by the said Acts. The title shall commence with the admission, &c. As to enfranchised copyholds.

X. The property is held under a lease dated ——, and (after divers mesne assignments) was assigned to the vendor in the year 18—. The title shall consist of the original lease, and of the assignment to the vendor, and the purchaser shall not require the production of the mesne assignments, or any of them. Title to consist of lease and last assignment.

XI. The title shall commence with an indenture of the —— day of ——, whereby the property was demised for 500 years by way of mortgage. The vendors have been in uninterrupted possession of the property since the date of a certain indenture of the —— day of —— (whereby the property and the moneys thereupon secured were transferred to them), without having made any intermediate acknowledgment of the title of the mortgagor or his right of redemption, and under these circumstances it shall be assumed by the purchaser that the vendors are absolutely entitled to the premises for the residue of the said term of 500 years, absolutely discharged from all equity of redemption; and the purchaser shall not be entitled to require any other evidence of the above facts than a statutory declaration by the vendors to the effect above mentioned. As to title to mortgage term by adverse possession.

XII. The title shall commence with an indenture of lease dated the —— day of ——, whereby A. B. demised the property to C. D. for 80 years, on the terms therein mentioned; and the title to the reversion in fee expectant on the said lease shall commence with an indenture dated the —— day of ——, whereby E. F. conveyed such reversion in fee to G. H.; and the pur- Title to commence with lease and conveyance of reversion in fee.

AS TO COMMENCEMENT OF TITLE.

chaser shall not be entitled to require the production of the contract in pursuance of which it is stated in the said lease that the same was granted; and it shall be assumed that the said A. B. had at the date of the first mentioned indenture ample power to grant such lease, and that the said E. F. had at the date of the last mentioned indenture ample power to dispose of such reversion in fee as aforesaid.

Declaration as to possession.

XIII. THE vendor shall not be required to show any title to lot ——, or any evidence or explanation thereof, other than a statutory declaration from an old inhabitant in the parish in which the property is situate to the effect that the father of the vendor, who died intestate more than thirty years since, was in possession of the last mentioned lot at the time of his decease, and also a counterpart of the lease under which the present tenant has held the said lot for more than twenty years of the present vendor.

As to grants from the Crown.

XIV. THE vendor shall not be required to produce copies of any grants from the Crown.

Vendor not to produce recited deeds.

XV. THE vendor shall not be required to produce or give any abstract or evidence of the nature or contents of any deed, will, or instrument not in his possession, which may be recited or noticed in any of the abstracted deeds dated twenty years ago or upwards, other than shall appear therein.

Title to advowson.

XVI. THE title to the advowson shall commence with an indenture dated ——, and as there have been three presentations since the date of the said indenture, the purchaser shall be satisfied with the title commencing as above, notwithstanding it does not cover three entire incumbencies.

Title to ground rents.

XVII. THE title to the several ground-rents shall commence with counterparts of the several documents by which the same were respectively granted or reserved, and no purchaser shall be entitled to call for the originals of those documents, or for the production of, or to investigate or make any objection on account of the prior title to the several properties out of which such rents were respectively made payable by those documents; and no evidence shall be required of the identity of such properties respectively with the properties out of which the said rents respectively are represented in the particulars to be payable.

Title to

XVIII. THE counterparts of the deeds and leases by which

AS TO COMMENCEMENT OF TITLE.

the freehold and other ground-rents comprised in the particulars were created are the only evidence which will be supplied of the creation of such rents or of the remedies for securing the payment thereof, and no objection shall be taken on account of the manner or form in which the freehold ground-rents were originally granted or reserved.

ground rents (another form).

Where property is sold subject to fee-farm rent.

XIX. THE property is sold subject to a fee-farm rent of £5 created by an indenture dated ——, and to covenants and conditions contained in the same indenture as to buildings and otherwise, the nature of which covenants and conditions may be ascertained by an inspection of the said indenture, or a copy or abstract thereof, which will be produced at the sale. The receipt for the last payment of rent which shall have become due prior to the completion of the purchase shall be accepted by the purchaser as conclusive evidence of the performance of the covenants and conditions up to the completion of the purchase.

As to land acquired in exchange.

XX. ABOUT an acre of ground, part of lot ——, was acquired by the vendor under an agreement for exchange made in the year —— with A. B., and has been in the possession of the vendor since that time, but no conveyance has been made to him for completing such exchange, and A. B. is now dead, leaving an infant heir, ——. The vendor shall not be required to procure a conveyance of the said land, or to furnish any title thereto, or to the land given by him in exchange for the same, other than the aforesaid agreement.

Declaration as to pedigree, &c.

XXI. THE declaration with which the vendor on the occasion of his purchase was supplied in proof of the pedigree of —— of the identity of the property, and of various other circumstances connected with the title, shall be accepted by the purchaser as conclusive evidence of the matters therein stated and declared.

Evidence as to satisfaction of a particular legacy.

XXII. As to lot ——, the purchaser shall assume the due payment and satisfaction of a legacy of £——, charged thereon by the will of a former owner, who died more than —— years ago, and which became payable on his death, but for which no receipt or release can be produced.

Evidence as to satisfaction of legacies generally.

XXIII. THE vendor shall not be required to produce the receipt for, or any other evidence of, the satisfaction of any pecuniary legacy bequeathed by the will of ——, who died more than twenty years since, and the payment of which respectively

AS TO COMMENCEMENT OF TITLE.

is not thereby postponed, and at this distance of time it shall be assumed that every such legacy has been satisfied.

Evidence as to payment of charges.

XXIV. THE purchaser shall not require evidence of the payment of any legacy or sum of money charged on the estate by any will or other document, and which became payable more than twenty years ago.

As to deed executed by attorney.

XXV. As to a certain indenture dated the —— day of ——, and which was executed by the attorney of the vendor on that occasion, it shall be assumed by the purchaser that the principal was then alive.

As to satisfaction of mortgage.

XXVI. THE purchaser shall not be entitled to any other evidence of the satisfaction of a mortgage dated the —— day of —— than the fact that the mortgage deed is now in the possession of the vendor, and a statutory declaration by him to the effect that the mortgage deed has been in his possession during the last —— years, and that no claim has ever been made upon him for principal or interest under the same.

As to absence of indorsed receipt.

XXVII. THE purchaser shall make no objection on the ground that no receipt for the consideration money is indorsed on a certain indenture dated ——, the receipt thereof being duly acknowledged in the body of the deed (*u*).

As to dower.

XXVIII. IT shall be assumed that every former owner of any part of the property whose widow (if any) would have been entitled to dower or free bench, and is not mentioned in the title, did not leave a widow.

Title to consist of conveyance to vendor.

XXIX. THE title to the property being well known in the neighbourhood, no purchaser shall require any other evidence of such title than the conveyance of the lot or lots purchased by him to the present vendor.

Presumption of re-conveyance of legal estate.

XXX. THE re-conveyance or re-assignment of any legal estate by any trustee or mortgagee shall be presumed, where the period of thirty years shall have elapsed from the last conveyance or assignment thereof, and where no mention shall be made in any of the subsequent deeds of such legal estate being outstanding.

Determination of leases to be assumed.

XXXI. THERE being in a covenant against incumbrances contained in a deed dated —— an exception of two leases determinable on the lives of A. B. and C. D., no evidence shall be required of the determination of these leases, nothing being now known by the vendor concerning the same or either of them.

(*u*) See Conveyancing Act, 1881, sec. 54.

No. XI.

CONDITIONS *as to* TITLE DEEDS, ATTESTED COPIES, *&c.*

AS TO TITLE DEEDS, ATTESTED COPIES, &c.

I. (*As in Precedent No. V., Condition No. X., Suprà p.* 48.)

Custody and acknowledgments for production of deeds relating to several lots, and some of which relate also to other property.

II. SUCH of the muniments of title in the vendors' possession as relate to any lot or lots, and also to property not included in this sale, shall be retained by the vendors. Such of the muniments of title in the vendors' possession as relate solely to one lot and to no other property of the vendors, shall be delivered to the purchaser of that lot; and such of the muniments of title in the vendors' possession as relate to more than one lot, and to no other property of the vendors, shall be delivered to the purchaser of the larger part in value of the lots to which the same relate, if all such lots shall be sold, but otherwise shall be retained by the vendors. The vendors as to muniments retained by them, and the several purchasers to whom muniments shall be delivered as to such muniments, shall give to the purchaser or purchasers of other property to which the same respectively relate, an acknowledgment of their right to the production and to delivery of copies thereof, and an undertaking for their safe custody. Every acknowledgment and undertaking under this condition shall be prepared by and at the expense of the person to whom it is given, and shall be perused by or on behalf of the person giving the same at his own expense.

Custody and acknowledgments for production where deeds are in the possession of mortgagees, trustees, or others who concur in the sale.

III. ALL muniments of title which relate to other property as well as to the property now offered for sale, and which are in the possession of the vendor, or of any other person or persons concurring in the present sale shall be retained by the person or persons in whose custody the same now are, and he or they shall give to the several purchasers an acknowledgment of their right to production and delivery of copies thereof, and an undertaking for their safe custody, every such acknowledgment and undertaking to be prepared by and at the expense of the person to whom it is given and to be perused by or on behalf of the person giving the same at his own expense.

Purchaser to give

IV. SOME of the muniments of title relate not only to the

AS TO TITLE DEEDS, ATTESTED COPIES, &c.

property now offered for sale, but also to other property of the vendors of less value. Such muniments shall be delivered to the purchaser, and he shall give to the vendor an acknowledgment of his right to production and delivery of copies thereof, and an undertaking for their safe custody, such acknowledgment and undertaking to be prepared by and at the expense of the vendor, but to be perused by the purchaser at his own expense.

to vendor an acknowledgment for production of deeds.

Custody of lease.

V. As lots 3, 4, and 5 are held under the same lease, and are together subject to a ground rent of £1 per annum, the purchaser of lot 5 shall be liable to pay the whole of such ground rent as between the purchasers of the same three lots, and shall enter into covenants with the purchasers of lots 3 and 4 respectively to pay the same, and to indemnify them against all claims and demands in respect thereof. And the said purchaser of lot 5 shall be entitled to the possession of the original lease of the said three lots as soon as all the said lots have been sold, and the sale thereof respectively is completed, and shall give to the purchasers of the said other two lots an acknowledgment of their right to production and delivery of copies thereof, and an undertaking for their safe custody. But until the whole of the said three lots shall be sold, and the sale thereof finally completed, whether at the present or any future sale, the vendors shall be entitled to retain the said lease, and they will in that case, upon the request of the purchaser of any of the same lots, give to such purchaser an acknowledgment and undertaking as aforesaid. Every acknowledgment and undertaking under this condition shall be prepared by and at the expense of the person to whom it is given, and shall be perused by and on behalf of the person giving the same at his own expense.

Purchaser to be satisfied with attested copies.

VI. As to a farm called ——, the same forming at the time of its purchase by the former owner part of a larger property held under the same common title, such owner had handed over to him attested copies only of the former deeds in substitution of the deeds themselves, accompanied, however, with a covenant for the production of the originals. The deeds have since passed into a custody from which the vendors are advised their production cannot be enforced. The vendors will apprise the purchaser of the depositary, but they shall not be bound to take any steps to enforce production, and if the purchaser be

unable to procure the production of the deeds, he shall accept the title on the evidence of the attested copies. AS TO TITLE DEEDS, ATTESTED COPIES, &c.

VII. INASMUCH as certain indentures of lease and release, dated respectively the —— and —— days of ——, whereby lot —— was conveyed to the vendor, are lost, and can nowhere be found after a diligent search for the same, the purchaser shall be satisfied with the plain copies of those indentures which the vendor has in his possession, and it shall be assumed that such indentures respectively were duly executed and attested. Lost indentures.

No. XII.

CONDITIONS *as to* DESCRIPTION *of* PROPERTY *and* IDENTITY.

AS TO DESCRIPTION AND IDENTITY.

I. ALL the lots are believed, and shall be taken to be correctly described in the particulars, as to quantity and otherwise, and are sold subject to all chief or quit rents, rights of way and other easements (if any) affecting the same; and if any error, misstatement, or omission in the particulars be discovered, the same shall not annul the sale; nor shall any compensation be allowed by the vendor or the purchaser in respect thereof. The description of property to be deemed correct.

II. No purchaser shall be entitled to require any further or other evidence of the identity of the lot or lots purchased by him with the property described in the abstracted documents than is afforded by a comparison of the descriptions in the particulars, and in the abstracted documents respectively, and a statutory declaration (to be made and obtained at the expense of the purchaser requiring the same) that the purchased property has been held consistently with the title shown during the last twenty years. As to evidence of identity.

III. THE vendors shall not be required to identify or connect any of the lands comprised in the particulars, with the general or other descriptions contained in any of the deeds or other documents of title, nor to account for the quantity or abuttals of any lot, or part of a lot varying from the quantity or abuttals stated in any such deeds or documents. Another form.

AS TO DESCRIPTION AND IDENTITY.

Another form.

IV. In consequence of various alterations which have been made by the removal of fences, by laying various fields together, by inclosures, and other circumstances, the property is now, in many instances, described by names and quantities differing from those by which the same is described in the ancient documents of title, and the vendors shall not be required to identify the property with the ancient descriptions as contained in such documents.

Another form.

V. The descriptions contained in the title deeds and other documents abstracted shall be taken to comprise the respective lots, and no evidence of identity shall be required beyond such as is afforded by the descriptions in the deeds, and the vendors shall not be required to explain or reconcile any apparent differences or discrepancies in the descriptions contained in the abstracts. The several lots are sold subject to the estates and interests of tenants, whether by lease or otherwise.

Another form.

VI. Every purchaser shall admit the identity of the property purchased by him, with that comprised in the abstracted muniments upon the evidence afforded by a comparison of the descriptions in the particulars and muniments, and by a declaration to be made and obtained (if required) at the purchaser's expense, that the purchased property has been enjoyed according to the title for twenty years, unless where the title is limited to commence from a later date, when such declaration shall be limited to the date at which the title commences, and by the maps and terriers in cases in which evidence is afforded by parochial inclosure or other maps.

Vendor not to be required to distinguish tenures.

VII. The vendors shall not be required to identify or distinguish the copyhold parts of any lot from the freehold parts thereof, nor the copyhold parts held under one manor from those holden under any other manor; and in case any lot is held under more than one title, the vendors shall not be required to distinguish or point out the parts held under each title.

No. XIII.

CONDITIONS *as to* TITHES (*x*), LAND TAX, APPORTIONMENT *of* RENTS *and* OUTGOINGS.

AS TO TITHES, LAND-TAX, APPORTIONMENT, &c.

Evidence of land being tithe free.

I. ALL the lots having been declared to be tithe free by the —— inclosure award, the purchasers shall not require any other title to, or proof of the exemption of the lots from tithe, than the production of the said award.

Another form.

II. THE purchasers shall require no other evidence that the several lots are tithe free, than a declaration by the vendor that no tithes, or rent-charge in lieu of tithes, have been paid for the same for twenty years prior to the day of sale.

Evidence of redemption of land-tax.

III. THE purchasers shall require no other evidence that the land tax on the several lots has been redeemed, than a declaration that no land tax is charged thereon in the parochial assessments.

Apportionment of rents.

IV. THE lots are sold, subject to the existing tenancies; and as to such lot or lots as are in tenancy with other property at an entire rent or rents, the same shall be apportioned among such lots and other property as specified in the particulars, and every such apportionment shall be conclusive, and the tenant shall not be required in any case to consent to or concur in such apportionment.

As to apportionment of rent on sale of reversion.

V. LOTS 1 and 2 being subject to a lease at the entire rent of £——, the sum of £—— shall be the apportioned rent for lot 1, and the sum of £—— shall be the apportioned rent for lot 2, and the purchasers shall enter into mutual covenants at their own expense to secure to each his proportion of the said rent, but the tenant shall not be required to concur in or assent to such apportionment.

Apportionment of rent on sale of leaseholds.

VI. LOTS 1 and 2 being held under one lease, at the entire rent of £——, the sum of £—— shall be the apportioned rent for lot 1, and the sum of £—— shall be the apportioned rent for lot 2; and the purchasers of the said lots shall enter into

(*x*) Where a vendor is owner of lands, and of the tithes issuing out of them, but the tithes have not been merged, the particulars ought not to state the lands as tithe free.

AS TO TITHES, LAND-TAX, APPORTIONMENT, &c.

mutual covenants for the payment of their respective proportions of the said rent, and shall grant mutual powers of distress and entry for securing such payment. If only one lot shall be sold the vendor shall stand in the place of the purchaser as regards the other lot for the purpose of this condition.

Apportionment of rents and covenants by way of underleases.

VII. THE purchaser of the largest lot in value shall take an assignment of the lease, and shall execute to the other purchasers under-leases of the lots purchased by them respectively, for the remainder of the said term (wanting ten days), subject to the rent of £—— in respect of each of such lots; and by such under-leases each purchaser shall be indemnified against the payment or observance of any portion of the rent or covenants mentioned in the lease, except the rent and covenants to be paid and performed in respect of his particular lot, and shall covenant for the payment of his proportion of the said rent and covenants. If any lot shall remain unsold, the vendor shall stand in the place of the purchaser of the largest lot in value for the purposes of this condition. Every instrument to be executed under this condition shall be prepared by and at the expense of the respective purchasers, who shall also execute at their own expense counterparts of their leases.

Apportionment of land-tax and rent-charge.

VIII. IN all cases where an entire sum for land-tax, rent-charge in lieu of tithes, or other outgoings, is payable in respect of the lands comprised in two or more lots, the same shall be apportioned amongst such several lots at the sums mentioned in the particulars at the foot of each lot respectively; and such apportionment shall be accepted by and binding upon the respective purchasers; and anything that may be requisite to be done or executed, for giving effect to such apportionment, shall be at the cost of the purchaser requiring the same; but the completion of any purchase shall not be delayed on account of any such requisition.

Apportionment of perpetual rent-charge issuing out of the property sold, and other property of the vendor.

IX. THE whole of the property comprised in the particulars, together with other property of the vendor not included in this sale, is subject to a perpetual yearly rent-charge of £——. Each of the lots shall be held subject to such proportion of the said rent-charge as is specified in the particulars, and each purchaser shall enter into a covenant with the other purchasers and with the vendor for the payment of the covenantor's proportion

of the rent-charge, and to indemnify them respectively against the same, and shall also grant to them respectively powers of distress and entry upon the lot or lots so purchased by the covenantor for better securing such indemnity. If any of the lots shall not be sold, the vendor shall for the purpose of this condition stand in the place of the purchaser of such lot or lots respectively. The residue of the rent-charge shall remain exclusively charged on the property retained by the vendor, and he shall in respect thereof enter into similar covenants with the several purchasers, and grant to them similar powers of distress and entry. Every deed of covenant and grant under this condition shall be prepared by and at the expense of the covenantee. The receipt for the last payment of the said rent-charge due prior to the day of sale, shall be accepted as conclusive evidence that all the covenants and conditions contained in the indenture creating the said rent-charge, and on the part of the grantee to be observed and performed, have been duly observed and performed up to the day of sale.

AS TO TITHES, LAND-TAX, APPORTIONMENT, &c.

X. The dwelling-house now offered for sale, is one of four dwelling-houses granted by a deed dated, &c., in consideration of a perpetual rent of £4 thereby reserved, and subject to certain covenants and conditions therein contained with respect to buildings and otherwise, the nature of which covenants and conditions may be ascertained by an inspection of the deed at any time prior to the completion of the purchase. This dwelling-house was afterwards conveyed to the vendor subject to a yearly sum of £1, part of the said rent-charge, and to the aforesaid covenants and conditions, so far as the same related to the said dwelling-house: and mutual covenants were entered into for indemnifying each party from the payment of the rent, and from the observance of the covenants which ought to be paid and observed respectively by the other party. The present sale is made on the footing of the above arrangement.

On sale of dwelling-house, subject to proportion of perpetual rent-charge.

No. XIV.

CONDITIONS *as to* INDEMNITY *against* CHARGES.

AS TO INDEMNITY AGAINST CHARGES.

Vendor's bond to be indemnity against annual payment.

I. LOT —— is subject to an annual payment of £—— to the poor of L——, which is also charged on other estates of considerable value. The purchaser shall accept the vendor's bond as a sufficient indemnity against the aforesaid annual payment, such bond to be prepared by and at the expense of the purchaser.

Vendor to assign bond of indemnity to purchaser.

II. LOT —— is subject to an annual payment of £—— to the poor of L——, which is also charged on other estates in the same parish. Upon the occasion of the purchase of the said lot by the late A. B., in the year 18—, the then vendor gave to him a bond of indemnity against the aforesaid annual payment. The present vendors being the executors and trustees of the will of the said A. B., will assign the said bond to the purchaser, who shall accept the same as a sufficient indemnity. The assignment to be prepared by and at the expense of the purchaser.

Part of the purchase-money to be set apart to answer charge.

III. THE property offered for sale is charged with a sum of £2000, which will become payable to a son of the vendor, now aged eighteen years, upon his attaining the age of twenty-one years, or upon the death of the vendor (which shall last happen). The vendor will enter into a covenant with the purchaser to satisfy the charge when it shall become payable, and to indemnify the purchaser therefrom, and will also set apart a sum of £2000 out of the purchase-money and invest it in Consols in the names of two trustees, one to be nominated by the vendor, and the other by the purchaser, upon proper trusts for the same purpose. The purchaser shall accept such covenant and declaration of trust as a sufficient indemnity against the said charge, and the deed or deeds containing the same shall be prepared by and at his expense.

Indemnity against jointure and portions.

IV. THE property hereby offered for sale is, with other property, charged with a jointure of £——, payable to the vendor's wife, if she survives him, and with £——, for the portions of his children, who are at present infants. The vendor will convey to

two trustees, one of whom shall be nominated by himself, and the other by the purchaser, the remaining property subject to these charges, upon proper trusts for raising the same out of such remaining property, in exoneration of the property hereby offered for sale, and will also furnish to the purchaser a statutory declaration by a competent land valuer, to the effect that such remaining property is worth at least £——. The purchaser shall accept such conveyance in trust and declaration as a sufficient indemnity against the charges.

As to indemnity against charges.

V. The property comprised in the particulars is subject, together with other estates, to an annuity of £——, for the life of A. B. By an indenture, dated the —— day of ——, the vendor demised certain property not comprised in the particulars which is also subject to such annuity) to two trustees, for 600 years, upon the trusts and under the powers therein mentioned, to the intent that the same might be an indemnity to the several purchasers and proprietors of all the remainder of the property of the vendor which might be liable to such annuity from the payment thereof. The lands so appropriated are of ample value for the purpose of such exoneration, and the purchaser shall not be entitled to make any objection on account of the existence of the annuity, or to inquire into the title thereto, or to require any further or additional indemnity to be given against the same, except (if required) the personal covenant of the vendor for this purpose, to be prepared by and at the expense of the purchaser, or to require the concurrence of the annuitant; but the purchaser shall be entitled at his own expense, to a covenant from the trustees of the said indenture, in a form appropriate to persons acting in this capacity, for the production of such indenture.

Purchaser to be satisfied with indemnity of other lands against annuity.

VI. Lots —— and —— are, with other property, charged with an annuity of £——, payable to A. B., during the widowhood of C. B., her mother, and a sum of £——, payable to A. B., on the death or marriage of the said C. B., and the concurrence of the said A. B. in the conveyance to the purchasers cannot be obtained. A sum of £—— has been invested upon mortgage of certain hereditaments in the names of the vendors for the purpose of indemnifying the several purchasers or proprietors of the several hereditaments subject to the aforesaid charges, and proper trusts in that behalf have been declared of the same.

As to indemnity against annuity and gross sum.

AS TO INDEMNITY AGAINST CHARGES.

The purchasers shall be satisfied with this indemnity and the production of the deed declaring the trusts of the indemnity fund, of which they may have a copy at their own expense. The vendors have taken the usual powers of altering or varying the securities for others of a like nature, and the purchasers shall not be entitled to inquire into the value of or title to the original or any substituted securities.

As to indemnity against annual sums.

VII. THE several annual sums of £—— and £——, subject to which lots —— and —— respectively are in the particulars mentioned to be sold, are charged upon lands comprised in such lots respectively, together with lands of less value comprised in other lots, which are intended to be sold free therefrom. The several purchasers of lots —— and —— shall enter into covenants with the purchasers of the said other lots, for the payment of the said annual sums; which covenants shall be prepared by and at the expense of the covenantees, and shall be accepted by them as a sufficient indemnity against the said annual sums respectively.

No. XV.

MISCELLANEOUS.

MISCELLANEOUS CONDITIONS.

Special method of selling by auction.

I. THE vendors reserve to themselves the liberty of offering the premises for sale either in one lot or in the several lots specified in the particulars, or of offering for sale any two or more of such lots together, and after having tried any of the aforesaid methods of sale, of offering the premises for sale according to any other of the said methods, as they shall think proper; and in every case each bidder must abide by his bidding, and the highest bidder, according to the method of sale ultimately adopted in any case, shall be the purchaser.

That lots are sold subject to tenancies, rights of way, &c.

II. ALL the lots are sold subject to existing tenancies, and to all rights of way and other easements (if any) affecting the same.

MISCELLANEOUS.

Fixtures to be valued.

III. The tenant's fixtures shall be paid for by the purchaser at a valuation, to be made by two indifferent persons, or their umpire, to be appointed in the same manner as the referees, or their umpire mentioned in the —— condition.

As to one of the vendors being an infant.

IV. One of the vendors, the owner of one undivided sixth part of the property offered for sale, being an infant aged eighteen years, the other vendors will covenant with the purchasers for the confirmation of the sale by the infant when he shall attain the age of twenty-one years; and in the meantime one-sixth of the purchase-money shall be set apart and invested in Consols in the names of two trustees, one to be nominated by such other vendors and the other to be nominated by the purchaser, in trust for the infant if he shall confirm the sale upon attaining twenty-one, and if not, then in trust for the purchaser; and the dividends of the stock shall in the meantime be accumulated, and follow the ultimate destination of the principal stock.

Succession duty.

V. The vendors, being a tenant for life (aged —— years), and remainder-man, the purchaser shall take the property subject to the succession duty, which will become payable upon the death of the tenant for life (*y*).

As to exceptions in documents.

VI. Wherever in any document there is an exception of any hereditaments which have been previously sold, it shall be assumed that such excepted hereditaments did not include any part of the property comprised in the particulars.

Insufficient stamp.

VII. The purchaser shall make no objection on the ground that a certain indenture of mortgage, dated ——, is insufficiently stamped, and shall not require any further stamp duty to be paid thereon.

Stamps.

VIII. If any deeds or documents shall be found to be unstamped or insufficiently stamped, which, however, is not known to be the case, no objection or requisition shall be made on that account.

Succession duty on sale by tenant for life and remainder-man.

(*y*) Where land is sold by a tenant for life and remainder-man, it is considered that in the absence of special stipulation the purchaser is entitled to require that the succession duty, which will become payable on the death of the tenant for life, shall be compounded for by the vendors in advance under sect. 41 of the Succession Duties Act (16 & 17 Vict. c. 51). See 1 Dart, V. & P. 543, fourth edition, p. 2. It seems desirable to throw the burden on the purchaser. See observations on the subject in a note to "Agreements," Precedent No. X., *infrà*.

MISCELLANEOUS.

Stamps.

IX. THE stamping or re-stamping of any instruments which may be found to be unstamped or insufficiently stamped, shall be paid for by the purchaser, if he shall require the same to be done.

Registration in Middlesex.

X. THE purchaser shall make no objection on the ground that any deeds or documents have not been registered in the Middlesex Registry.

AGREEMENTS.

By the Statute of Frauds (*a*), it is enacted that no action shall be brought whereby to charge any person upon any contract or sale of lands, tenements, or hereditaments, or interest in or concerning them, unless the agreement upon which such action shall be brought, or some memorandum thereof, shall be in writing, and signed by the party to be charged therewith, or some other person thereunto by him lawfully authorised (*b*).

By Statute of Frauds agreements as to land to be in writing, signed by the party to be charged, or his agent.

It is proposed in this Dissertation to consider, I. What is an interest in or concerning lands within the statute. II. What is necessary to constitute a binding contract. III. The effect of part performance to take a contract out of the statute; and, IV. Some of the consequences arising from a contract.

I. *What is an interest in or concerning lands within the statute.*

Whatever property would upon the death of an owner of land go to his executors as emblements is not within the statute. Upon this principle it has been decided that the statute does not apply to an agreement for the sale of growing crops of potatoes (*c*), turnips (*d*), wheat or barley (*e*), and it is immaterial whether the crops are to be gathered by the vendor or the purchaser. But a growing crop of grass to be mown and made into hay by

What property is within the statute.

As to growing crops.

Grass, timber, fruit.

(*a*) 29 Car. 2, c. 3, sec. 4.

(*b*) See Smith *v.* Webster, 3 Ch. D. 49.

(*c*) Parker *v.* Staniland, 11 East, 362; Evans *v.* Roberts, 5 B. & C. 829; Warwick *v.* Bruce, 2 Mau. & Selw. 205.

(*d*) Dunne *v.* Ferguson, Hayes, 540.

(*e*) Jones *v.* Flint, 10 Ad. & Ell. 753; Mayfield *v.* Wadsley, 3 B. & C. 357.

the purchaser (*f*), standing timber or underwood to be cut by the purchaser (*g*), or growing fruit (*h*), being property which would pass to the heir, has been held to be within the statute. But it appears that a contract for sale of growing timber to be removed by the purchaser is not a contract within the 4th section of the Statute of Frauds (*i*). The grant of a right to shoot over land is an interest in land within the 4th section (*ii*).

Tenant's fixtures.

A tenant's fixtures may be sold by parol agreement (*k*).

Agreement for lease.

Although by sec. 2 of the Statute of Frauds a lease for any term not exceeding three years where the reserved rent amounts to two-thirds at least of the improved value may be made by parol, an *agreement* for the sale of such a lease must be in writing (*l*).

Shares in mining and railway companies.

Shares in a mining company worked on the cost-book principle (*m*), and shares in a railway company made personal estate by the Railway Act (*n*), are not within the statute.

Agreement where part of property is within the statute.

An entire agreement for the sale of property, of which only part is within the statute, cannot be supported as to that part which is not within the statute (*o*).

What constitutes a contract.

II. *What is necessary to constitute a binding contract within the statute.*

Signature of agreement.

The party to be charged must sign the agreement, either personally or by some other person by him lawfully authorised.

For the purposes of the 4th section it is sufficient that the agent should be appointed by parol, although

(*f*) Crosby *v.* Wadsworth, 6 East, 602.

(*g*) Scorell *v.* Boxall, 1 Y. & J. 396.

(*h*) Rodwell *v.* Phillips, 9 M. & W. 501.

(*i*) Marshall *v.* Green, 1 C. P. D. 35. But see Smith *v.* Surman, 9 B. & C. 829.

(*ii*) Webber *v.* Lee, 9 Q. B. D. 315.

(*k*) Hallen *v.* Runder, 1 Cro. M. & R. 266; Lee *v.* Gaskell, 1 Q. B. D. 700.

(*l*) Barrett *v.* Rolph, 14 M. & W. 348.

(*m*) Watson *v.* Spratley, 10 Exch. 22; Powell *v.* Jessop, 18 C. B. 336.

(*n*) Duncuft *v.* Albrecht, 12 Sim. 189.

(*o*) Sug. V. & P. 102, and cases there cited.

for the purposes of the 1st section the appointment must be *by writing*. The 1st section relates to instruments less executory in their character than agreements.

Authority of agent.

An agent for the sale or purchase of property cannot bind his principal beyond the authority given him (*p*), and in particular an agent for sale cannot bind the vendor by entering into an open contract for sale (*q*); and the agency may be revoked by the principal at any time before the agreement is signed (*r*).

The whole agreement must be in writing.

The whole agreement is required to be in writing, so that the document, whether it be a letter or more formal memorandum, must in itself embody the whole terms of the contract, or refer to some writing, conditions, particulars of sale, or other papers which do (*s*). Where the memorandum signed by the party to be charged refers to another document, it may be proved by parol evidence that a certain document is the one referred to (*t*).

Vendor's name need not be stated in contract if otherwise sufficiently described.

It is not necessary in order to satisfy the statute that the vendor's name should be stated in the written contract, if he is sufficiently described to admit of his being identified by extrinsic evidence, and the same rule applies to the description of the property sold. Thus it has been held sufficient to describe the vendor as "the proprietor," or "the trustee for sale" (*tt*), and the property as "the property purchased for £420, at the Sun Inn, Paxton, on the above date" (*u*).

A contract for lease must mention time for commencement.

In a contract for a lease, it is necessary in order to satisfy the Statute of Frauds that the time for its commencement should be mentioned (*uu*).

(*p*) Olding *v.* Smith, 16 Jur. 497; Chinnock *v.* Marchioness of Ely, 11 Jur. 329.

(*q*) Hamer *v.* Sharp, L. R. 19 Eq. 108.

(*r*) 1 Dart, 173.

(*s*) Allen *v.* Bennet, 3 Taunt. 169; Dobell *v.* Hutchinson, 3 Ad. & Ell. 355; Laythoarp *v.* Bryant, 2 Bing. N. C. 735; Clinan *v.* Cooke, 1 Scho. & Lef. 22; Powell *v.* Dillon, 2 Ball & B. 416; Warner *v.* Willington, 3 Drew. 523; Langstaff *v.* Nicholson, 25 Beav. 160; Ridgway *v.* Wharton, 6 Ho. of L. C. 38; Rishton *v.* Whitmore, 8 Ch. D. 467.

(*t*) Morris *v.* Wilson, 5 Jur. N. S. 168.

(*tt*) Sale *v.* Lambert, L. R. 18 Eq. 1; Rossiter *v.* Miller, 3 App. Cas. 1124; Catling *v.* King, 5 Ch. D. 660.

(*u*) Shadlow *v.* Cotterell, 20 Ch. D. 90.

(*uu*) Marshall *v.* Burridge, 19 Ch. D. 233.

What is a sufficient signing.

A signature at the beginning of the agreement is a sufficient signing to take it out of the statute; as when a person drew up an agreement in his own handwriting beginning "I, A. B., agree," &c., and left a place for a signature at the bottom but never signed it, it was considered to be a memorandum in writing within the statute (*x*). But in the case of articles of agreement containing the terms of a contract, and purporting to be made between certain persons whose names were stated at the commencement, and ending with "As witness our hands," without being followed by any name or signature, it was decided that there was not a sufficient signing within the statute (*xx*). So the alteration of a draft conveyance will not take the case out of the statute (*y*).

Sales by auction within statute.

Sales by auction are within the statute. The auctioneer in such cases is held to be agent both for the vendor and purchaser (*z*); and his signature of the name of the highest bidder is sufficient to satisfy the requisitions of the statute. If the highest bidder is only an agent, the signature by the auctioneer of the agent's name will be binding on the principal (*a*).

The receipt of the vendor, or, in the case of an auction, of the auctioneer, for the purchase-money or deposit, or the entry by the auctioneer of the account of the sale in his books, is sufficient; but a receipt for a deposit, in order that it should amount to an agreement, must expressly or by reference state the price, or what proportion the deposit bears to the price (*b*).

Where a contract in writing exists which binds one party to a contract, any subsequent note in writing signed by the other is sufficient to bind him, provided

(*x*) Esp. N. P. Cas. 190; Saunderson *v.* Jackson, 2 Bos. & Pul. 238; Bleakley *v.* Smith, 11 Sim. 150.

(*xx*) Hubert *v.* Treherne, 3 Man. & G. 743.

(*y*) Hawkins *v.* Holmes, 1 P. Wms. 770.

(*z*) Sug. V. & P. 119.

(*a*) White *v.* Proctor, 4 Taunt. 209; Kenworthy *v.* Schofield, 2 B. & C. 945.

(*b*) Blagden *v.* Bradbear, 12 Ves. 466; Emerson *v.* Heelis, 2 Taunt. 38; Gosbell *v.* Archer, 2 Ad. & Ell. 500; Clerk *v.* Wright, 1 Atk. 12; Shadlow *v.* Cotterell, 20 Ch. D. 90.

it either contains in itself the terms of the contract or refers to any writing which contains them (*c*).

When letters constitute an agreement.

Letters may constitute a sufficient agreement within the statute, provided they contain the names of the parties, the amount and nature of the consideration to be paid on one side and received on the other, and a reasonable description of the subject matter of the contract.

A letter is binding on the writer from the time at which it is posted (*d*), although it may not be received until the following day (*e*); and if the writer requires that his offer should be accepted by a particular day, the acceptance of the offer will be binding on him, although he may not receive it until some time after the day specified, in case the delay has been occasioned by the Post Office, or by the misdirection of the letter (*f*).

The answer to the written offer must be a simple acceptance of the terms proposed, without the introduction of any new or different term (*g*); and if the proposal is once refused, it cannot afterwards be revived by tendering a simple acceptance of it (*h*).

If the letter requires the other party to supply a term in the agreement, there must be a special acceptance in writing containing that term (*i*).

Offer may be retracted before acceptance.

An owner having made a written offer to sell, may at any time before acceptance retract the offer, or add new terms to it (*j*).

The agreement must contain all necessary terms.

If an agreement for sale is entered into by letters or otherwise, containing all the necessary terms, so as to satisfy the Statute of Frauds, such an agreement is binding, although it may contain a provision that a more formal agreement is to be prepared and signed by both parties (*k*). But if an offer to purchase is made, and

(*c*) Dobell *v.* Hutchinson, 3 Ad. & Ell. 355.

(*d*) Kennedy *v.* Lee, 3 Mer. 441; Thomas *v.* Blackman, 1 Col. 301.

(*e*) Potter *v.* Sanders, 6 Hare, 1.

(*f*) Adams *v.* Lindsell, 1 B. & Ald. 681.

(*g*) Holland *v.* Eyre, 2 Sim. & Stu. 194; Appleby *v.* Johnson, L. R. 9 C. P. 152.

(*h*) Hyde *v.* Wrench, 3 Beav. 334.

(*i*) Boys *v.* Ayerst, 6 Madd. 316.

(*j*) Honeyman *v.* Marriott, 6 Ho. of L. Cas. 112; Dickinson *v.* Dodds, 2 Ch. D. 463.

(*k*) Fowle *v.* Freeman, 9 Ves. 351;

such offer is accepted subject to a provision as to a contract, then the stipulation as to the contract is a term and condition of the acceptance, and there is no agreement independent of that stipulation (*l*). If an offer is made and accepted, subject to the title being approved by the purchaser's solicitor, it is apprehended that such a reservation does not prevent the contract from being considered as complete, and would not enable the purchaser to refuse specific performance, if the vendor has a good title and the purchaser's solicitor unreasonably and improperly refuses to approve it (*ll*).

Effect of offer being accepted subject to title being approved by purchaser's solicitor.

A notice given by a railway company to treat with a landlord for the purchase of land for the purposes of their Act constitutes, as between the landowner and the company, the relation of vendor and purchaser to a certain extent and for certain purposes; and some of the consequences which flow from an actual contract also follow upon the notice to treat, such as, that the particular lands which the company are to take and the landowner to give up after certain steps prescribed by the Act shall have been taken, are fixed, and neither party can get rid of the obligation, the one to take, and the other to give up, such lands, but in no other sense and to no further extent does the notice constitute a contract, at least on the part of the landowner (*n*). Thus it has been held, that if an owner dies after receiving the usual notice to treat, but before the price is fixed, the purchase-money goes to his heir, and not to his personal representative (*o*). But as soon as the price is fixed, the relation of the parties as vendor and purchaser is as fully constituted as in the case of a formal and regular agreement (*p*).

Notice by company to treat with landowner, constitutes relation of vendor and purchaser, to what extent.

Kennedy *v.* Lee, 3 Mer. 441; Thomas *v.* Dering, 1 Keen, 729; Bonnewell *v.* Jenkins, 8 Ch. D. 70.

(*l*) Wood *v.* Midgley, 5 D. M. & G. 41; Chinnock *v.* Marchioness of Ely, 4 D. J. & S. 638; Rossiter *v.* Miller, 5 Ch. D. 648; Crossley *v.* Maycock, L. R. 18 Eq. 180; Winn *v.* Bull, 7 Ch. D. 29.

(*ll*) Hussey *v.* Horne Payne, 4 App. Ca. 311; Clack *v.* Wood, 9 Q. B. D. 275.

(*n*) Haynes *v.* Haynes, 1 Drew. & Sm. 426, and the cases there cited; Gardner *v.* Charing Cross Railway Company, 2 Johns. & Hem. 248; *Re* the Battersea Park Acts, 32 Beav. 591; Guest *v.* Poole & Bournemouth Railway Company, L. R. 5 C. P. 553.

(*o*) *Re* the Battersea Park Acts, 32 Beav. 591.

(*p*) The Regent's Canal Company *v.* Ware, 23 Beav. 575; Mason *v.*

III. *The effect of part performance to take a case out of the statute.*

Part performance takes case out of statute.

It is a settled principle of Courts of equity to decree specific performance of a verbal agreement which would otherwise be void under the statute, where there has been part performance, in order to prevent the injustice which would arise from permitting a party to escape from the engagements he has entered into upon the ground of the statute, after the other party has upon the faith of such engagement, expended his money, or otherwise acted in execution of the agreement (*q*).

The ground of the jurisdiction being the fraud of one of the parties to the contract in permitting the other party to incur expense on the faith of it, a verbal agreement by a tenant for life to grant a lease in execution of a power, followed by expenditure by the intended lessee, cannot be enforced against the remainder-man, unless it can be shown that such expenditure was permitted by him with a knowledge that the agreement was only a verbal one (*r*).

Delivery of abstract, &c., not part performance.

The delivery of an abstract, the giving instructions or directions for the preparation of the conveyance, the admeasurement of the estate, payment of the auction duty, or payment of the purchase-money, do not amount to a part performance so as to take the case out of the statute (*s*).

The part performance must be referred to some agreement.

To take the case out of the statute, the act of part performance must be referred to some agreement, and must be shown to have been done with a view to perform such agreement. Accordingly, where a father verbally promised in consideration of his daughter's marriage, to give her a house as a wedding present, and

The Stokes Bay Pier and Railway Company, 32 L. J. Ch. 110; Metropolitan Railway Company *v.* Woodhouse, 11 Jur. 296; Harding *v.* Metropolitan Railway Company, L. R. 7 Ch. 154; Watts *v.* Watts, *ib.* 17 Eq. 217.

(*q*) Mundy *v.* Joliffe, 5 My. & Cr. 167, 177; Powell *v.* Lovegrove, 8 De G. M. & G. 357; Sutherland *v.* Briggs, 1 Hare, 26; Laird *v.* Birkenhead Railway Company, John. 500; Pain *v.* Coombs, 1 D. & J. 34.

(*r*) Blore *v.* Sutton, 3 Mer. 237; Trotman *v.* Flesher, 3 Giff. 1.

(*s*) Sug. V. & P. 123; Fry on Specific Performance, pp. 182—186.

immediately after the marriage he put his daughter and her husband into possession; it was held that the possession being referable to the verbal promise, the case was taken out of the statute (*t*). But on the other hand, the mere *possession* of a tenant cannot be set up as an act of part performance of an agreement for a lease or purchase, because the possession is referable to his character as tenant (*u*).

IV. *Some of the consequences of a contract for sale.*

Consequences of contract.

Purchaser becomes owner from date of contract.

From the date of a valid contract for sale the purchaser becomes in equity the owner of the land, and the vendor becomes entitled to the money or other consideration to be paid for the purchase, subject, however, to the obligation of the vendor to show that he has a title.

Loss happening after contract falls on purchaser.

It follows, that any loss or deterioration arising to the property after the contract and before the conveyance, falls upon the purchaser. Thus, where houses contracted to be sold were afterwards burnt down, the contract was enforced against the purchaser, although the vendor had since the contract allowed the insurance to expire without giving him notice (*v*); and for the same reason, on the purchase of a life annuity, the purchaser must bear any loss arising from the death of the *cestui que vie* before the conveyance (*w*). On the other hand the purchaser is entitled to any benefit which may accrue to the estate from circumstances happening between the contract and conveyance, as by the dropping of lives on the purchase of a reversionary interest, or by an increase or improvement in the value of the land (*x*), and where he purchases in consideration of a life annuity to be paid to the vendor, the contract will be enforced against the latter, although the annuity drops

(*t*) Ungley *v.* Ungley, 5 Ch. D. 887.

(*u*) Fry on Specific Performance, 175, 176. Brennan *v.* Bolton, 2 Dr. & W. 349; 3 Ves. 378; 19 Ves. 479; 1 Sw. 181.

(*v*) Paine *v.* Miller, 6 Ves. 349. See also Poole *v.* Shergold, 2 Bro. C. C. 118.

(*w*) Kenney *v.* Wexham, 6 Mad. 355.

(*x*) Harford *v.* Purrier, 1 Mad. 539.

by the death of the *cestui que vie* before the conveyance (*y*). In these cases, however, it is material that the vendor and purchaser have respectively performed their portion of the contract up to the time of the event happening (*z*). It is to be observed that a contract for the sale of a house does not pass to the purchaser the right to a sum paid to the vendor on account of damage by fire occurring between the date of the contract and the completion of the purchase under an insurance effected before the contract (*zz*).

At what time a title must be made.

As a general rule, a vendor not having a good title at the time of the contract, may cure the defect at any time before the day appointed for completion; and if he files a bill for specific performance, at any time before the chief clerk's certificate of title, unless time is made of the essence of the contract, or there has been unreasonable delay (*a*). But this indulgence will not be given to a vendor who enters into a contract for the sale of an estate with a knowledge that he has no right to sell, and cannot in the ordinary course of law or equity acquire such right (*b*). Moreover it is conceived that even when a vendor acts *bonâ fide*, a purchaser may on discovering the want of title repudiate the contract, but in this case he must do so at once, and not act as if he considered the contract to be subsisting. Thus in *Hoggart* v. *Scott* (*c*), the executors of a last surviving trustee sold under the misapprehension that a power of sale given to the trustees had devolved on them. They afterwards procured themselves to be appointed trustees, and thus acquired the power, and the steps taken for that purpose were taken with the purchaser's knowledge and acquiescence. It was held that the purchaser might have retired from the contract as soon as the want of title was discovered,

(*y*) Mortimer *v.* Capper, 1 Bro. C. C. 156; Jackson *v.* Lever, 3 Bro. C. C. 60.

(*z*) Counter *v.* McPherson, 5 Moore, 83.

(*zz*) Rayner *v.* Preston, 18 Ch. D. 1.

(*a*) Wynn *v.* Morgan, 7 Ves. 202; Mortlock *v.* Buller, 10 Ves. 315; Boehm *v.* Wood, 1 J. & W. 419; Eyston *v.* Simonds, 1 Y. & C. N. C. 608; Garnett *v.* Acton, 28 Beav. 337.

(*b*) Sug. V. & P. 181; Chamberlain *v.* Lee, 10 Sim. 450.

(*c*) 1 Russ. & M. 293.

but as he had not taken that course, specific performance was decreed against him. In *Eyston* v. *Simonds* (*d*), the title was bad by reason of the alienage of a person through whom the vendor claimed. The purchaser by his own inquiries ascertained the defect of title, but did not, until after some months of negotiation, repudiate the contract. Pending the investigation in the Master's office, the vendor acquired a good title, and under the circumstances he was held to be entitled to a decree. And in a case where it was found that a small portion of an estate contracted to be sold was the property of another person, the Court would not discharge the purchaser from the contract without giving the vendor an opportunity of acquiring a title to that portion (*e*). So also when a tenant for life entered into a contract for the sale of an estate in fee and the purchaser proceeded with the investigation of the title with full notice of the defect, specific performance was decreed, although the consent of the parties entitled in remainder was not obtained until the hearing (*f*). In *Adams* v. *Brooke* (*g*), the vendors were trustees with power to sell with the consent of the tenant for life. Upon a bill filed by the trustees for specific performance, it was held that the plaintiffs must prove that the requisite consent was given before the filing of the bill, there being no contract without such consent.

Doubtful title.

It was formerly the practice of the Court of Chancery not to oblige a purchaser to take a title which might be considered doubtful, and in one case it was laid down that the opinion of the judge in its favour must be so clear, that it does not apprehend that another judge would form a different opinion (*i*). But this doctrine has been qualified by recent cases. In *Alexander* v. *Miles* (*k*), James, L. J., observed: "We do not say that there may not be cases, in which a question of law may be considered so doubtful, that a Court would not, on its own view,

(*d*) 1 Yo. & C. N. C. 608.
(*e*) Chamberlain *v.* Lee, 10 Sim. 444.
(*f*) Salisbury *v.* Hatcher, 2 Yo. & C. N. C. 54.
(*g*) 1 Yo. & C. N. C. 627.
(*i*) Pyrke *v.* Waddingham, 10 Hare, 1; Rogers *v.* Waterhouse, 4 Drew. 329; Mullings *v.* Trinder, L. R. 10 Eq. 449.
(*k*) L. R. 6 Ch. 131.

compel a purchaser to take a title: still, as a general and almost universal rule, the Court is bound as much between vendor and purchaser as in every other case to ascertain and determine what the law is, and to take that to be the law which it has so ascertained and determined. The exceptions to this will probably be found to consist, not in pure questions of legal principle, but in cases where the difficulty and the doubt arise in ascertaining the true construction and legal operation of some ill-expressed and inartificial instrument." The present rule seems to be this, that where the doubt involves some general principle of law, it is the duty of the Court to remove it by deciding the point; but if it is one as to the proper construction of some ill-expressed instrument, on which opinions might well differ, the Court will not as a general rule decide it in the absence of interested persons, and will not force the purchaser to accept the title (*kk*). A Court of Appeal, whose opinion is in favour of a title, will not treat it as doubtful, merely because the inferior Court has taken a different view and decided against it (*l*).

Taking possession when an acceptance of title.

The taking of possession by the purchaser is an equivocal act, but does not of itself amount to an acceptance of the title. In every case it is a question depending upon the circumstances whether the conduct of the purchaser is inconsistent with an intention to call for the title, or to insist on objections to it (*m*). In *Fleetwood* v. *Green* (*n*), specific performance was decreed against a purchaser who had remained in possession for a considerable time after the delivery of an abstract without making any objection; and in *Burnell* v. *Brown* (*o*), a purchaser was held to have waived any objection on the ground of the property being subject to a right of sporting, by taking possession with knowledge of the existence of such right.

(*kk*) Palmer *v.* Locke, 18 Ch. D. 381; Collier *v.* McBean, 1 Ch. 81.

(*l*) Shepherd *v.* Doolun, 3 D. & War. 1; Beioley *v.* Carter, L. R. 4 Ch. 230; Alexander *v.* Miles, *ubi suprà*; Bell *v.* Holtly, 15 Eq. 178, 193.

(*m*) Simpson *v.* Sadd, 4 De M. G. & G. 672.

(*n*) 15 Ves. 594.

(*o*) 1 Jac. & W. 168. See also Blatchford *v.* Fitzpatrick, 6 Beav. 233.

Measure of damages on breach of contract for sale.

The general rule of law that where a person makes a contract and breaks it, he must pay the whole damage sustained in consequence, does not apply to contracts for the sale of real estate, in respect of which a special rule has been established by the case of *Flureau* v. *Thornhill* (*p*), viz., that on a breach of a contract of this nature arising from want of title, the purchaser can only recover by way of damages the expenses of investigating the title, and is not entitled to compensation for the loss of the bargain (*q*).

Effect of bankruptcy on unprofitable contracts.

The 23rd section of the Bankruptcy Act, 1869 (*r*), provides that when any part of the property of a bankrupt consists of unprofitable contracts, the trustee of a bankrupt may by writing under his hand disclaim such property; in which case it shall revert to the person entitled on the determination of the estate of the bankrupt.

Effect of death of either party after contract.

A binding contract for sale is not avoided by the death of either party before completion, and on the death of the vendor his executors are entitled to the purchase-money (*s*). On the death of the purchaser, his heir or devisee is entitled to have the estate conveyed to him, and in either case the estate itself will be the primary fund for the payment of the unpaid purchase-money (*t*). In a case where a verbal contract for sale was entered into and the vendor died intestate, and his heir, who was also administrator, executed a conveyance of the estate in pursuance of the parol contract, it was held that the purchase-money belonged to the next of kin of the deceased (*u*).

Effect of contract on devise.

A general devise contained in a will made since the Wills Act, passes land contracted to be purchased after

(*p*) 2 Bl. Rep. 1078; Walker *v.* Moore, 10 B. & C. 416. See Engell *v.* Fitch, L. R. 4 Q. B. 659; Pounsett *v.* Fuller, 17 C. B. 660; Sikes *v.* Wild, 30 L. J. Q. B. 325; Robinson *v.* Harman, 1 Exch. 850.

(*q*) The rule laid down in Flureau *v.* Thornhill has been recently fully considered and confirmed by the House of Lords in Bain *v.* Fothergill, L. R. 7 H. L. 158, and an exception attempted to be engrafted on it by Hopkins *v.* Grazebrook, 6 B. & C. 31, disapproved. See Burrow *v.* Scammell, 19 Ch. D. 175.

(*r*) 32 & 33 Vict. c. 71.

(*s*) Broome *v.* Monck, 10 Ves. 597; Garnett *v.* Acton, 28 Beav. 333; Hudson *v.* Cook, L. R. 13 Eq. 417; Harding *v.* Harding, *ib.* 493.

(*t*) See Dissertation on Mortgages, infra, sect. 7.

(*u*) Frayne *v.* Taylor, 33 L. J. Ch. 228.

the date of the will; and a contract for sale of land in equity revokes a previous devise made by the vendor (*x*); and it seems clear that the purchase-money will pass under his will as part of his personal estate (*y*).

Vendor dying leaving infant heir.

If a vendor died before completion, leaving an infant heir or devisee, the Court would not consider him a trustee for the purchaser within the meaning of the Trustee Act, 1850, until he had been declared to be so in a suit for specific performance (*z*). But on a sale to a railway company, where the company had paid the purchase-money and taken possession, Wood, V.-C., treated the case as an exception, the sale being compulsory, and made a vesting order on petition (*a*); and Romilly, M.R., made a similar order, on a sale to a railway company, where the purchase-money had not been paid and the title had not been accepted before the vendor's death (*b*). It is difficult to see that the fact that a sale to a railway company is compulsory would furnish a sufficient distinction for this purpose.

Personal representatives of deceased vendor can convey.

In the event of a vendor dying before completion, after the 31st December, 1881, it is provided by the 4th section of the Conveyancing Act, 1881, that his personal representatives shall, by virtue of the Act, have power to convey the land to the purchaser.

STAMPS ON AGREEMENTS.

Stamps on agreements.

An agreement cannot be offered in evidence unless it is duly stamped. If the subject-matter is not of the value of £5, or where the agreement is for the hire of any labourer, artificer, manufacturer, or menial servant, or for the sale of any goods, wares, or merchandize, or is between the master and mariner of a ship for wages on any voyage coastwise from port to port in the United Kingdom, no stamp is required, but in other cases the agreement must be stamped with 6*d*. (*c*).

(*x*) Farrar *v.* Earl Winterton, 5 Beav. 1; *In re* London Bridge Approaches Act, 13 Sim. 569.

(*y*) 1 Jar. on Wills, 148; Knollys *v.* Shepherd, 1 J. & W. 499; Dart, 256.

(*z*) *Re* Carpenter, Kay, 418.

(*a*) Russell's estate, 12 Jur. N. S. 225.

(*b*) *Re* Lowry's Will, L. R. 15 Eq. 78.

(*c*) See 33 & 34 Vict. c. 97, under the head "Agreement or memorandum of agreement."

Stamp on purchase of several lots at auction.

A purchaser of several lots at an auction is considered to have entered into an equal number of agreements for the purchase of the same lots, so that the agreement must bear as many stamps as there are lots, assuming that the purchase-money for each lot amounts to £5 (*d*). But the value of the lots must be taken separately, so that if the purchase-money for no single lot amounts to £5, the agreement would not be chargeable with any stamp.

If the agreement consists of several letters, it is sufficient to stamp one (*e*).

No. I.

FOR SALE OF FREEHOLDS.

AGREEMENT *for the* SALE *of* FREEHOLD PROPERTY (*a*).

Parties.

MEMORANDUM OF AGREEMENT made the —— day of ——, BETWEEN A. B. of, &c. (*vendor*), of the one part, and C. D. of, &c. (*purchaser*), of the other part:—

Agreement to sell and purchase.

I. THE said A. B. (hereinafter called the vendor) agrees to sell, and the said C. D. (hereinafter called the purchaser) agrees to purchase the hereditaments described in the schedule hereto, and the inheritance thereof in fee simple in possession, free from incumbrances, at the price of £——, [to be paid as follows, that is to say, the sum of £—— as a deposit immediately after the signing of this agreement, and the residue thereof on the completion of the purchase] (*b*).

Completion of purchase.

II. THE purchase shall be completed on the —— day of —— at the office of Mr. —— (the vendor's solicitor), and the pur-

(*d*) James *v.* Shore, 1 Stark. N. P. C. 426; Watling *v.* Horwood, 12 Jur. 48.
(*e*) Stead *v.* Liddard, 1 Bing. 196.

(*a*) The above precedent is applicable to the case of a tenant for life selling under the Settled Land Act, 1882, as the Act or the notice mentioned in sec. 45 need not be referred to in the contract.

Proper form of agreement for sale by a woman married after 1882.

Where the agreement for sale is by a married woman who has married since 1882, she will be described as "A. B. the wife of H. B., of, &c., to whom she was married since the 31st day of December, 1882." In other respects the agreement will be in the same form as Precedent No. I., as to freeholds; Precedent No. II., *infrà*, p. 93, as to copyholds; and Precedent No. III., *infrà*, p. 93, as to leaseholds, substituting "she" for "he," and "her" for "him," when necessary. If she was married before 1883, but has acquired the property to be sold since the 31st Dec. 1882, the date of the marriage will be omitted in the description of the vendor.

(*b*) The words within brackets will be omitted, where no deposit is paid.

chaser shall then have possession of the said premises, all outgoings up to that time being cleared by the vendor. If the purchase shall not be completed on the —— day of —— next, the purchaser shall pay to the vendor interest on [the residue of] the purchase-money after the rate of £4 per cent. per annum from that day until the completion of the purchase (*c*).

Delivery of abstract.

III. The vendor will, on or before the —— day of ——, deliver to the purchaser or his solicitor an abstract of title to the said premises, such abstract to commence with, &c. (*d*).

IV. (*Condition as to identity.—See Conditions of Sale, suprà*, p. 67.)

Errors of description.

V. The quantities stated in the schedule shall be presumed to be correct, and an error as to quantity, if any such shall be found, shall neither annul the sale nor entitle either party to compensation. Should any other mistake be found in the schedule before the completion of the contract, the same shall not annul the sale, but a fair compensation shall be made in respect thereof to or by the purchaser, as the case may require, the amount to be settled (in case of difference) by two referees, one to be appointed by each party, or their umpire, and if either party shall fail to appoint a referee for the space of ten days

Observations on the condition as to interest.

(*c*) On sales by auction the rate of interest is usually fixed at 5 per cent., but on a sale by private contract a purchaser may fairly object to pay more than 4 per cent.; and, even at this reduced rate, the condition will in many cases operate unfairly on the purchaser. The delay in completion may arise from the state of the title or the slowness of the vendor's solicitor in replying to the requisitions, or from many causes over which the purchaser can exercise no control, and he may find himself in the position of having to pay interest while his money is lying idle. Under these circumstances a prudent purchaser will often be advised, either to object to the condition altogether, or to insist on a proviso being added to the following effect: "Provided always, that if the delay in completion shall arise from the state of the title or from any other cause not being the purchaser's fault, the purchaser shall be at liberty to place [the remainder of] his purchase-money on a deposit account at the —— Bank, or on any securities which he may think fit, in his own name and at his own risk, and give notice thereof to the vendor, and thereupon the vendor shall be entitled to receive from the purchaser such interest only as shall be actually produced by such deposit or investment." If nothing is said about interest, the purchaser's obligation in this respect will be left to depend on the rule of equity—viz.: That from the day fixed for completion the purchaser is entitled to receive the rents, and must pay interest at 4 per cent. on his purchase-money, but unless the delay is his own fault he may relieve himself of the liability to interest by giving the vendor notice that his money is lying idle. See *suprà*.

(*d*) Insert after the 3rd article any special conditions which the state of the title may require. For forms of such conditions, see *suprà*, p. 59. If the vendor has a registered title, the 3rd clause will be similar to the 4th clause in Precedent No. III. of conditions of sale, *suprà*, p. 44, and clauses 4 to 8 of the above Precedent will be omitted.

FOR SALE OF FREEHOLDS.

after notice shall have been given him by the other party so to do, the referee appointed by the other party may make a final decision alone (*e*). The premises are sold subject to all easements (if any) affecting the same.

(*or the following.*)

[V*a*. The description of the property in the particulars is believed to be correct, but if any error shall be found therein the same shall not annul the sale, nor shall any compensation be allowed in respect thereof.]

Objections and requisitions.

VI. All objections and requisitions in respect of the title or the abstract, or anything appearing therein, or in this agreement, shall be stated in writing, and sent to the office of the said Mr. —— within —— days from the delivery of the abstract, and all objections and requisitions not sent within that time shall be considered to be waived; and if the purchaser shall insist on any objection or requisition in respect of the title, which the vendor shall be unable or unwilling to remove or comply with, the vendor shall be at liberty (notwithstanding any intermediate negotiation in respect thereof, or any attempt to remove or comply with the same), by notice in writing, to rescind this agreement, in which case the purchaser shall receive back his deposit, without interest or costs.

Vendor to execute assurance.

VII. Upon payment of the purchase-money at the times and in manner aforesaid the vendor shall make and execute to the purchaser a proper assurance of the premises, such assurance to be prepared by and at the expense of the purchaser, and to be left by him not less than seven days before the said —— day of —— at the office aforesaid for execution by the vendor. (*If the deeds are retained by the vendor, add:*) The said assurance shall include an acknowledgment of the purchaser's right to production and delivery of copies of the title deeds retained by the vendor as relating also to other property, and an undertaking for their safe custody. (*If the vendor is a trustee for sale, add:*) The vendor is a trustee for sale, and the concurrence of the persons beneficially interested in the purchase-money shall not be required.

Insurance money to be applied in reinstating premises, if burnt before completion.

[VIII. If the said premises or any part thereof shall be destroyed or damaged by fire before the completion of the purchase, the moneys payable under the existing insurance of the

(*e*) See *suprà*, pp. 38, 39, note.

said premises in the —— office, shall be applied in reinstating the same, or shall be paid to the purchaser at his option (*f*).] FOR SALE OF LEASEHOLDS.

IN WITNESS, &c.

THE SCHEDULE ABOVE REFERRED TO.

No. II.

AGREEMENT *for the* SALE *of* COPYHOLD PROPERTY. FOR SALE OF COPYHOLDS.

MEMORANDUM OF AGREEMENT made the —— day of ——, BETWEEN A. B. of, &c. (*vendor*), of the one part, and C. D. of, &c. (*purchaser*), of the other part:— Parties.

I. THE said A. B. (hereinafter called the vendor) agrees to sell, and the said C. D. (hereinafter called the purchaser) agrees to purchase the hereditaments described in the schedule hereto, being copyhold of the manor of ——, in the county of ——, and the inheritance thereof, according to the custom of the said manor, in possession, free from incumbrances, except the rents, fines, heriots, suits, and services therefor due and of right accustomed, at the price of £—— [to be paid, &c. (*as in Article I. of Precedent No. I., suprà*, p. 90)]. Agreement to sell and purchase.

(*Remaining conditions as in Precedent No. I.*)

IN WITNESS, &c.

THE SCHEDULE ABOVE REFERRED TO.

No. III.

AGREEMENT *for the* SALE *of* LEASEHOLD PROPERTY. FOR SALE OF LEASEHOLDS.

MEMORANDUM OF AGREEMENT made the —— day of ——, BETWEEN A. B. of, &c. (*vendor*), of the one part, and C. D. of, &c. (*purchaser*), of the other part:— Parties.

I. THE said A. B. (hereinafter called the vendor) agrees to Agreement to sell and purchase.

(*f*) This clause will be inserted where the property sold consists of a house or buildings which have been insured by the vendor. See Rayner *v.* Preston, 14 Ch. D. 297; 18 Ch. D. 1.

FOR SALE OF LEASEHOLDS.

sell, and the said C. D. (hereinafter called the purchaser) agrees to purchase at the price of £—— all that messuage or dwelling house being No. —, in —— Street, held by lease, dated the —— day of ——, for the unexpired residue of a term of —— years computed from the —— day of ——, subject to the yearly rent of £——, and to the covenants and conditions contained in the lease and on the lessee's part to be observed and performed.

II. (*Condition as to completion of the purchase and interest.—See Precedent No. I., suprà*, p. 90.)

Delivery of abstract.

III. THE vendor shall, on or before the —— day of —— next, deliver to the purchaser or his solicitor an abstract of title commencing with the said lease, and the purchaser shall be deemed to have notice of all its contents. The production of the receipt for the last payment of rent which shall have become due under the lease shall be deemed conclusive evidence that all the covenants and conditions in the lease have been observed and performed up to the day of completion, or that all breaches thereof (if any) have been waived (*a*). (*Insert here any other special conditions which the state of the title may require*) (*b*).

IV., V. (*Conditions as to errors in description and objections and requisitions.—See Precedent No. I., suprà*, pp. 91, 92.)

Vendor to execute assignment to purchaser.

VI. ON payment of the purchase-money at the time and in manner aforesaid the vendor shall make and execute a proper assignment of the said premises to the purchaser, such assignment to be prepared by and at the expense of the purchaser, and to be left by him seven days before the said ——

When leasehold is valuable, contract should enable purchaser to require production of lessor's title.

(*a*) When the leasehold property is valuable, being subject only to a ground rent, and the lease is a recent one, and the lessor not a person whose title is well known, a prudent purchaser will insist on the contract containing a stipulation enabling him to require the production of some evidence of the lessor's title, particularly as, according to a recent decision, the statutory rule does not protect him from the application of the doctrine of constructive notice as regards equities which he would have discovered had he duly investigated the title. See Putman *v.* Harland, 17 Ch. D. 353. If the vendor is unable to comply with such a stipulation, not having himself inquired into the title when he took the lease, the purchaser should be advised by his solicitor as to the risk which he incurs, and must be left to decide for himself whether in the face of such risk he desires to proceed with the purchase.

(*b*) If the vendor has a registered title, clause 3 will be similar to clause 4 of Precedent No. 4, Conditions of Sale, *suprà*, p. 45, and the remaining clauses of the above Precedent will be omitted, except that relating to "errors of description."

day of ——, at the office aforesaid, for execution by the vendor. FOR SALE OF LEASEHOLDS.

In witness, &c.

The Schedule above referred to.

No. IV.

AGREEMENT *for the* Sale *of* Leasehold Property *held by an* Underlease, *and the* Tenant's Fixtures. FOR SALE OF LEASEHOLDS AND FIXTURES.

MEMORANDUM OF AGREEMENT, made the —— day of ——, Between A. B. of, &c. (*vendor*), of the one part, and C. D. of, &c. (*purchaser*), of the other part :— Parties.

I. The said A. B. (hereinafter called the vendor) agrees to sell, and the said C. D. (hereinafter called the purchaser) agrees to purchase the leasehold messuage and premises described in the schedule hereto, for the unexpired residue of the term of ninety-nine years granted therein by the indenture of underlease mentioned in the said schedule, subject to the rent reserved by the said indenture of underlease, and the covenants and conditions therein contained and on the lessee's part to be observed and performed, and also the tenant's fixtures in and about the said premises, at the price of £—— [to be paid, &c. (*as in Precedent No. I., suprà*, p. 90.)] Agreement to sell and purchase.

(*Remaining conditions as in Precedent No. I.*)

In witness, &c.

The Schedule above referred to.

The messuage or dwelling-house being No. —, —— Street, in the parish of ——, with the stables and appurtenances thereto belonging, now in the occupation of ——, which premises were, by an indenture of underlease, dated the —— day of ——, and made, &c., demised unto the said —— (*original sublessee*), his executors, administrators, and assigns, for the term of ninety-nine years, wanting the last ten days thereof,

FOR SALE OF LEASEHOLDS AND FIXTURES.

computed from the —— day of ——, at the yearly rent of £——, and subject to the covenants and conditions contained in the said indenture of underlease, and on the underlessee's part to be observed and performed.

No. V.

LEASEHOLD SHOP AND BUSINESS.

AGREEMENT *for* SALE *of a* LEASEHOLD HOUSE *and* SHOP *and the* STOCK IN TRADE *and* GOODWILL *of the* BUSINESS *carried on there.*

Parties.

MEMORANDUM OF AGREEMENT made the —— day of ——, BETWEEN A. B. of, &c. (*vendor*), of the one part, and C. D. of, &c. (*purchaser*), of the other part :—

Agreement for sale and purchase of leasehold premises and goodwill for a fixed sum,

I. THE said A. B. (hereinafter called the vendor) agrees to sell, and the said C. D. (hereinafter called the purchaser) agrees to purchase the leasehold messuage or tenement and shop, being No. —, —— Street, in the town of ——, held for the residue of a term of —— years granted therein by an indenture of lease, dated, &c., at the yearly rent of £——, and subject to the covenants and conditions contained in the said indenture of lease, and also the goodwill (*a*) of the business of ——, now carried on by the said A. B. on the said premises, at the price of £——. The vendor also agrees to sell, and the purchaser agrees to purchase the tenant's fixtures in and about the said premises,

(*a*) If it is intended that the vendor shall be at liberty, after the sale, to carry on a similar business in the neighbourhood, the expression "goodwill" should be qualified by some explanation in the contract or particulars of sale. Thus, in Johnson *v.* Helleby, 34 L. J. Ch. 179, the question arose how the goodwill of a business, which upon the death of one of the partners had been directed to be sold as a going concern, should be described, and more particularly whether the existence of the right of the surviving partner to carry on a like trade in the same town should be mentioned in the particulars ; and the Court directed that the following words should be inserted at the foot of the advertisement for sale :—"This sale will give to the purchasers both the premises on which the business has been carried on and the benefit to be derived from the habit of customers resorting to the said premises ; but will not prevent persons formerly interested in the said business, or those who may represent them, from carrying on the same business."

and the stock in trade and book and other debts belonging and due and owing respectively to the said A. B., and the benefit of all contracts and engagements entered into with him in respect of the said business, at a sum to be determined by valuation as hereinafter is mentioned. LEASEHOLD SHOP AND BUSINESS. and tenant's fixtures and stock in trade at a valuation.

II. The purchaser shall, immediately after the signing of this agreement, pay to the vendor the sum of £—— by way of deposit. The purchase shall be completed on the —— day of —— next, at the office of, &c., and the purchaser shall, as from that day, have possession of the said premises, and be the proprietor of the said business subject to the following conditions. Deposit and completion of purchase.

III. (*Agreement as to delivery of abstract, &c., suprà*, p. 91.)

IV. The tenant's fixtures, stock in trade, and effects, book and other debts, shall be valued according to the value of the same on the —— day of —— next, and the valuation shall be made by L. M., of, &c., who is appointed for this purpose by the vendor, and N. O., of, &c., who is appointed for this purpose by the purchaser, or in case the said valuers shall disagree, then by P. Q., of, &c., who has been appointed umpire by the valuers. If either of the valuers shall die before the valuation is completed, or shall refuse to act, another valuer shall be appointed in his place by the party by whom the deceased or refusing valuer was appointed; and if the umpire shall die before the valuation is completed, or shall refuse to act, the valuers shall appoint another umpire. Valuation of fixtures, &c.

V. The purchaser shall pay the remainder of his purchase-money (including the amount of the aforesaid valuation) at the times following: (that is to say,) one third part thereof on the —— day of —— next, one third part thereof on the —— day of ——, 18—, and the remaining one third part thereof on the —— day of ——, 18—, and the instalments of purchase-money for the time being remaining unpaid shall bear interest after the rate of £5 per cent. per annum, computed from the said —— day of —— next. Purchase-money to be paid by instalments.

VI. Upon the payment on the —— day of —— next of the instalment of purchase-money hereby made payable on that day, the vendor shall make and execute to the purchaser a proper assignment of the said premises, such assignment to be prepared by and at the expense of the purchaser, and the vendor shall, in Vendor to assign on completion.

LEASEHOLD SHOP AND BUSINESS.

and by such assignment, covenant with the purchaser not to carry on a similar business in the said town of ——, or within a distance of —— miles therefrom.

Purchaser to secure unpaid instalments of purchase-money by bond and mortgage.

VII. At the same time with the execution of the said assignment, the purchaser, and two sureties to be approved of by the vendor, shall execute to the vendor their joint and several bond, in a sufficient penalty, conditioned for the payment of the remaining instalments of the said purchase-money, and the interest thereof, at the times and in the manner above provided; and the purchaser shall also make and execute to the vendor a proper and effectual mortgage of the said leasehold premises, and the stock in trade and effects of the said business, for further securing the payment of the said instalments and interest, such mortgage to contain such powers and provisions as the vendor may reasonably require.

How business is to be carried on in meantime.

VIII. In the meantime, and until the completion of the said purchase, the business shall be carried on by the vendor as at present, for his own benefit, but the purchaser shall act as his manager, and shall receive the weekly sum of £—— by way of salary as such manager.

Purchaser to accept lessor's title.

IX. The purchaser has examined the title of the vendor to the said leasehold premises, and he is satisfied therewith, and hereby undertakes to accept the same as it stands.

In witness, &c.

No. VI.

SALE OF FREEHOLDS, COPYHOLDS, AND LEASEHOLDS.

AGREEMENT *for the* Sale *by* Trustees *of an* Estate *comprising* Freeholds, Copyholds, *and* Leaseholds.

MEMORANDUM OF AGREEMENT made the —— day of ——, Between A. B. of, &c., and C. D. of, &c. (*vendors*), of the one part, and E. F. of, &c. (*purchaser*), of the other part:—

Parties.

Agreement to sell and purchase.

I. The said A. B. and C. D. (hereinafter called the vendors) agree to sell, and the said E. F. (hereinafter called the pur-

chaser) agrees to purchase ALL the messuages or tenements, lands, and hereditaments, situate in the parish of ——, in the county of ——, described in the first part of the schedule hereto, and the inheritance thereof in fee simple in possession, free from incumbrances; AND ALSO the messuages or tenements, lands and hereditaments, being copyhold of the manor of ——, in the said county, described in the second part of the said schedule, and the customary inheritance thereof in fee simple in possession, free from incumbrances, except the rents, fines, heriots, suits, and services therefor due and of right accustomed; AND ALSO the messuages or tenements, lands and hereditaments, situate in the said parish of ——, described in the third part of the said schedule for all the residue now unexpired of the term of —— years, granted therein by an indenture of lease, dated, &c., and made, &c., free from incumbrances, except the rent reserved by the same indenture, and the covenants and conditions therein contained, and on the lessee's part to be observed and performed, at the price of £——. SALE OF FREEHOLDS, COPYHOLDS, AND LEASEHOLDS.

II. IN addition to the said sum of £——, the purchaser shall pay for all timber, and timber-like trees, tellers, pollards, and saplings, down to the value of 1*s.* per stick inclusive, standing or growing upon the said premises, according to a valuation to be made in manner following (that is to say): Each party shall by writing appoint a valuer and give notice thereof by writing to the other party within fourteen days after the signing of this agreement, and the valuers thus appointed shall, before they proceed to act, appoint by writing an umpire, and the two valuers, or if they disagree, their umpire, shall make the valuation. If either party shall neglect to appoint a valuer or to give notice thereof to the other party for the space aforesaid, the valuer appointed by the other party shall make a final valuation alone. The expression "the purchase-money" used in this agreement shall include the amount of the valuation to be made under this article. Valuation of timber.

III., IV., V. (*Conditions as to completion of the purchase and payment of interest—delivery of abstract and time for making requisitions.—See Precedent No. I.*, pp. 90, 91, 92.)

VI. UPON payment of the purchase-money at the time and in manner aforesaid, the vendors shall make and execute a proper assurance of the said premises to the purchaser, such Vendors to execute assurance to purchaser.

SALE OF FREEHOLDS, COPYHOLDS, AND LEASEHOLDS.

assurance to be prepared by and at the expense of the purchaser, and to be left at the office aforesaid at least seven days before the said —— day of —— next, and the same shall include an acknowledgment by the vendors of the purchaser's right to production of the title deeds, which will be retained by the vendors as relating also to other property, and an undertaking for their safe custody. The vendors are trustees for sale, and the concurrence of the persons beneficially interested in the purchase-money shall not be required.

(*Other conditions as in Precedent No. I.—See suprà*, p. 92.)

In witness, &c.

The Schedule above referred to.

No. VII.

FOR SALE OF FREEHOLDS SUBJECT TO APPROVAL OF COURT.

AGREEMENT *for* Sale *of* Freeholds *subject to the* Approval *of the* Court.

Parties.

MEMORANDUM OF AGREEMENT made the —— day of ——, Between A. B. of, &c. (*vendor*), of the one part, and C. D. of, &c. (*purchaser*), of the other part:—

Subject to approval of Court, agreement to sell and purchase.

I. Subject to the approval of the Chancery Division of the High Court of Justice, the said A. B. (hereinafter called the vendor) agrees to sell, and the said C. D. (hereinafter called the purchaser) agrees to purchase, &c.—(*See Precedent No. I., suprà*, p. 90.)

II. to VII., *as in Precedent No. I.*

Vendor to take steps to obtain approval of this agreement by the Court.

VIII. The vendor shall at his own expense forthwith take and carry to completion all necessary steps and proceedings, and use his best exertions to obtain by means of an application to the said Court its approval of this agreement.

Agreement to be void unless approval of Court ob-

IX. This agreement shall be void unless the vendor shall at his own expense, within —— calendar months from the date of these presents, obtain the approval by the Court thereof, either

in its general form and terms, or with such variations therein as shall within the like time be assented to by the vendor and purchaser. FOR SALE OF FREEHOLDS SUBJECT TO APPROVAL OF COURT.

IN WITNESS, &c.

tained within a given time.

No. VIII.

AGREEMENT *for* SALE *of a* LIFE ESTATE *in* FREEHOLDS. FOR SALE OF LIFE ESTATE.

MEMORANDUM OF AGREEMENT made the —— day of ——, BETWEEN A. B. of, &c. (*vendor*), of the one part, and C. D., of, &c. (*purchaser*), of the other part :— Parties.

I. THE said A. B. (hereinafter called the vendor) agrees to sell, and the said C. D. (hereinafter called the purchaser) agrees to purchase ALL THAT the estate for life, without impeachment of waste, of the vendor in All (*parcels*), with their appurtenances, free from incumbrances, at the price of £—— [to be paid as follows, &c.—(*See Precedent No. I., suprà*, p. 90.)] Agreement to sell and purchase.

Other conditions as in Precedent No. I., so far as applicable, adding the following :—

THIS agreement shall not be rendered void, or be in anywise affected by the death of the vendor before the said —— day of —— next. Agreement not to be rendered void by death of vendor.

IN WITNESS, &c.

No. IX.

FOR SALE OF REVERSIONARY ESTATE.

AGREEMENT *for* SALE *of a* REVERSIONARY ESTATE *in* FREEHOLDS.

MEMORANDUM OF AGREEMENT made the —— day of ——, BETWEEN A. B. of, &c. (*vendor*), of the one part, and C. D. of, &c. (*purchaser*), of the other part:—

Parties.

Agreement to sell and purchase.

I. THE said A. B. (hereinafter called the vendor) agrees to sell, and the said C. D. (hereinafter called the purchaser) agrees to purchase ALL THOSE (*parcels*), and the inheritance thereof in fee simple, free from incumbrances (subject nevertheless to the estate therein of G. H. of &c., during his life, which estate is without impeachment of waste), at the price of £——.

Completion of purchase.

II. THE purchase shall be completed on the —— day of —— next, at the office of Mr. ——, the vendor's solicitor, and if from any cause whatever the purchase is not completed on that day, the purchaser shall pay interest on the said purchase-money after the rate of £5 per cent. per annum, computed from that day until the completion of the purchase.

III., IV. (*Conditions as to delivery of abstract, and time for making requisitions, as in Precedent No. I., suprà*, pp. 91, 92.)

Vendor to execute assurance.

V. ON payment of the purchase-money at the time and in manner aforesaid the vendor shall execute to the purchaser a proper assurance of the said premises, subject to the said life estate, such assurance to contain a covenant by the purchaser for the payment of the succession duty, which shall become payable upon the death of the said G. H., and for indemnifying the vendor therefrom (*a*): and the said assurance shall be prepared by and at the expense of the purchaser, and shall be left by him before the said —— day of —— next, at the office aforesaid, for execution by the vendor.

As to deeds in possession of tenant for life.

VI. THE documents of title relating to the said premises are in the possession of the said G. H. as tenant for life,

(*a*) As between vendor and purchaser of a reversion, the purchaser must pay the succession duty: Cooper *v.* Trewby, 28 Beav. 194.

and on his death such of the said documents as relate exclusively to the said premises shall be delivered to the purchaser, and such of them as relate also to other property of the vendor, shall be retained by him. The vendor will on the completion of the purchase covenant with the said C. D. that as soon as the documents to be retained by him as aforesaid shall come into the possession of himself, his heirs or assigns, he or they will give to the said C. D., his heirs or assigns, an acknowledgment of his or their right to production of such documents and to delivery of copies thereof, and also an undertaking for the safe custody of such documents, and that until such acknowledgment and undertaking shall be given, he or they shall be subject to the same obligations in all respects as if such acknowledgment and undertaking had been given. FOR SALE OF REVERSIONARY ESTATE.

VII. This agreement shall not be rendered void by the death of the said G. H. before the said —— day of ——. Agreement not to be rendered void by death of tenant for life.

VIII. (*Condition as to errors of description.—See suprâ*, p. 91).

In witness, &c.

No. X.

AGREEMENT *for* Sale *by* Tenant for Life *and* Remainderman. FOR SALE BY TENANT FOR LIFE AND REMAINDERMAN.

MEMORANDUM OF AGREEMENT made the —— day of ——, Between A. B. of, &c. (who is tenant for life of the hereditaments hereby agreed to be sold) of the first part, C. D. of, &c. (who is tenant in fee simple in remainder of the said hereditaments) of the second part, and E. F. of &c. (*purchaser*) of the third part:— Parties.

I. The said A. B. and C. D. (hereinafter called "the vendors") agree to sell, and the said E. F. (hereinafter called "the purchaser") agrees to purchase the hereditaments described in the schedule hereto, and the inheritance thereof in fee Agreement to sell and purchase.

FOR SALE BY TENANT FOR LIFE AND REMAINDERMAN.

simple in possession, free from incumbrances (except the succession duty (if any) to become payable on the death of the said A. B., and which duty if it shall become payable will be at the rate of £— per cent.), at the price of £——.

(*Remainder of precedent same as Precedent No. I.* (*a*).)

IN WITNESS, &c.

THE SCHEDULE ABOVE REFERRED TO.

No. XI.

AGREEMENT FOR SALE SUBJECT TO FEE FARM.

AGREEMENT *for* SALE *of* FREEHOLDS *which are subject to a* PERPETUAL *yearly* RENTCHARGE.

Parties.

MEMORANDUM OF AGREEMENT made the —— day of ——, BETWEEN A. B. of, &c. (*vendor*), of the one part, and C. D. of, &c. (*purchaser*), of the other part:—

Agreement to sell and purchase.

I. THE said A. B. (hereinafter called the vendor) agrees to sell, and the said C. D. (hereinafter called the purchaser) agrees to purchase the hereditaments described in the schedule hereto, and the inheritance thereof in fee simple, free from incum-

Stipulation as to succession duty, on sale by tenant for life and remainderman.

(*a*) If A. tenant for life and B. tenant in remainder, join in conveying the fee simple in possession to C. a purchaser, succession duty will become payable under the 15th section of the Act on the death of A., at the same rate as if no alienation had been made, provided that no new succession is created in the meantime. Thus, if C. is living without having again aliened, at the death of A., C. will have to pay duty at the same rate as B. would have had to pay, but the actual sum to be paid will be different, as it will be calculated on the value of C.'s (not B.'s) life. But if C. dies before A., his heir or devisee will have to pay duty at once as on a succession derived from C., and on A.'s subsequent death, no further duty will be payable: (*In re* Cooper and Allen's contract, 4 Ch. D. 802.) Although the liability to duty is contingent only, it is conceived that in the absence of stipulation, a purchaser from tenant for life and remainderman is entitled to insist on its being commuted before its completion, under sect. 41 of the Act. (Dart, V. & P. p. 511.) It seems desirable, where the duty would be heavy, to guard against such a requisition by a clause in the contract, because, although the purchaser will probably give less on account of the liability, the deduction, having regard to the contingency that the duty may not become payable at all, ought not to be so much as would have to be paid for the commutation.

AGREEMENT FOR SALE SUBJECT TO FEE FARM.

brances except a fee farm rent of £10 created by an indenture dated the —— day of ——, and certain covenants and conditions contained in the same indenture as to buildings and otherwise, at the price of £——, to be paid on the —— day of ——, at the office of Mr. ——, the vendor's solicitor, at which time and place the purchase is to be completed, and the purchaser shall then have possession of the said premises, all outgoings up to that time being cleared by the vendor. If the purchase shall not be completed on the —— day of —— next the purchaser shall pay to the vendor interest on the purchase-money after the rate of £4 per cent. per annum from that day until the completion of the purchase.

Interest.

II. The vendor shall, on or before the —— day of ——, deliver to the purchaser or his solicitor an abstract of title to the said premises.

Delivery of abstract.

III. (*Clause for making requisitions, suprà*, p. 92).

IV. The title shall commence, &c. (*special conditions as to title*). The receipt for the last payment of the said rent of £10 which shall have become due prior to the completion of the purchase shall be accepted by the purchaser as conclusive evidence of the performance of the covenants and conditions contained in the said indenture of the —— day of —— up to the completion of the purchase, and the vendor shall on no account be required to deduce the title to the said rent, or to show that the person giving such receipt is the present owner thereof.

Receipt of last payment of rent to be evidence.

(*Other conditions as in Precedent No. I.*)

In witness, &c.

The Schedule above referred to.

No. XII.

FOR SALE OF ADVOWSON.

AGREEMENT *for* SALE *of an* ADVOWSON.

MEMORANDUM OF AGREEMENT made the —— day of

Parties. ——, BETWEEN A. B. of, &c. (*vendor*), of the one part, and C. D. of, &c. (*purchaser*), of the other part :—

Agreement to sell and purchase. I. THE said A. B. (hereinafter called the vendor) agrees to sell, and the said C. D. (hereinafter called the purchaser) agrees to purchase ALL THAT the advowson and perpetual right of presentation of and to the rectory and parish church of ——, in the county of ——, and the inheritance thereof in fee simple, free from incumbrances, at the price of £——, to be paid as follows (that is to say), the sum of £——, part thereof, immediately after the signing of this agreement, and the sum of £——, residue thereof, on the —— day of —— next, at the office of Messrs. —— (the vendor's solicitors), at which time and place the purchase is to be completed.

II. (*Condition as to delivery of abstract—clause for making requisitions, suprà*, pp. 91, 92.)

Commencement of title. III. THE title shall commence, &c. (*as in Precedent No. I. suprà*, p. 91, *adding at the end*—), and all recitals and statements in any document dated twenty years and upwards prior to the date of this agreement shall be conclusive evidence of the facts or matters recited or stated therein or to be assumed or implied therefrom (*a*).

Vendor to execute assurance. IV. UPON payment of the purchase-money at the times and in manner aforesaid the vendor and all other necessary parties (if any) shall execute a proper assurance of the said advowson to the purchaser, such assurance to be prepared by and at the expense of the purchaser, and to be left by him at least seven days before the said —— day of ——, at the office aforesaid, for execution by the vendor.

Power to either party V. IF through the default or neglect of either party the

(*a*) The rules in section 2 of the Vendor and Purchaser Act, 1874, appear not to apply to advowsons.

purchase shall not be completed on the said —— day of ——, then the other party may, by notice in writing, rescind this agreement, and in such case the defaulting or neglecting party shall pay and reimburse to the other party the costs and expenses which shall have been previously incurred by him in or about this agreement, or the carrying of the same into effect, or otherwise in relation thereto. FOR SALE OF ADVOWSON. —— to rescind contract in a certain case.

VI. If the purchase shall not be completed on the —— day of —— next, and if this agreement shall not be rescinded under Article V., the purchaser shall pay interest on the residue of the purchase-money, after the rate of £—— per cent. per annum, from the said —— day of —— next, until the completion of the purchase. Interest.

VII. If the said benefice shall become vacant before the said —— day of —— next, the vendor shall, upon payment of the purchase-money, present thereto the nominee of the purchaser. On vacancy of benefice before completion vendor to present nominee of purchaser.

In witness, &c.

No. XIII.

AGREEMENT *for* Sale *of a* Next Presentation. FOR SALE OF NEXT PRESENTATION.

MEMORANDUM OF AGREEMENT made the —— day of ——, Between A. B. of, &c. (*vendor*), of the one part, and C. D. of, &c. (*purchaser*), of the other part:— Parties.

I. The said A. B. (hereinafter called the vendor) agrees to sell, and the said C. D. (hereinafter called the purchaser) agrees to purchase All that the next presentation to the rectory and parish church of ——, in the county of ——, of which the Rev. —— is the present incumbent, at the price of £—— to be paid as follows, the sum of £——, part thereof, immediately after the signing of this agreement, and the sum of £——, residue thereof, on the —— day of —— next, at the office of Messrs. —— (the vendor's solicitors), at which time and place the purchase is to be completed. Agreement to sell and purchase.

II., III. (*As in last Precedent.*)

FOR SALE OF NEXT PRESENTATION.

Vendor to execute assurance.

IV. Upon payment of the purchase-money at the times and in manner aforesaid the vendor and all other necessary parties (if any) shall execute a proper assurance of the said next presentation to the purchaser, such assurance to be prepared by and at the expense of the purchaser, and to be left by him at least seven days before the said —— day of ——, at the office aforesaid, for execution by the vendor.

V., VI. (*Conditions as to rescinding the agreement on non-completion at the time specified, and as to interest as in last Precedent.*)

As to vacancy before completion.

VII. If the said benefice shall become vacant before the said —— day of —— next, the vendor shall, on payment of the purchase-money, present thereto the nominee of the purchaser (*a*).

In witness, &c.

No. XIV.

FOR SALE OF ADVOWSON AND ANNUAL SUM.

AGREEMENT *for* Sale *of an* Advowson, *or* Next Presentation, *and of an* Annual Sum *equal to* Interest *on the* Purchase-Money *until a* Vacancy (*aa*).

Parties.

MEMORANDUM OF AGREEMENT made the —— day of ——, Between A. B. of, &c. (*vendor*), of the one part, and C. D. of, &c. (*purchaser*), of the other part:—

Agreement to sell and purchase.

I. The said A. B. (hereinafter called the vendor) agrees to sell,

Stipulation in contract for sale of advowson, to provide for possibility of incumbent being made a bishop.

(*a*) If after the sale of a next presentation the incumbent is promoted to a bishopric, so that the next turn devolves on the Crown, the purchaser will, in the absence of a stipulation to the contrary, be entitled to the next presentation after that by the Crown. It is obvious, however, that such a postponement of the purchaser's right to present would seriously diminish the value of his purchase, and would in many cases entirely defeat the object with which he has purchased. Whenever, therefore, there is a probability of the present incumbent being made a bishop, a prudent purchaser will stipulate that such an event shall put an end to the contract, and obtain security for the repayment of his purchase-money. The best mode of effecting this object would be to make the arrangement provided for by Precedent XV. *infra*.

Arrangement that purchaser shall receive in-

(*aa*) It is sometimes made part of the arrangement on the purchase of an advowson or next presentation, that the purchaser shall receive interest on his purchase-money until a vacancy. Such an arrangement may be effected in two modes, (1) by the vendor giving to the purchaser his bond

and the said C. D. (hereinafter called the purchaser) agrees to purchase, for the sum of £——, ALL THAT, &c. (*describe advowson, or next presentation, as the case may be*) and also an annual sum of £——, being equal to interest on the said sum of £—— after the rate of £4 per cent. per annum, to be paid for such period and in such manner, and to be so secured as hereinafter mentioned, the said purchase-money to be paid on the —— day of —— next, at the office of Mr. —— (the vendor's solicitor), at which time and place the purchase is to be completed. FOR SALE OF ADVOWSON AND ANNUAL SUM.

II. UPON payment of the purchase-money as aforesaid the vendor and all other necessary parties (if any) shall make and execute a proper assurance of the said (*advowson or next presentation, as the case may be*), and shall also give and execute to the purchaser his (the vendor's) bond in a sufficient penalty conditioned for the payment to the purchaser, his executors and administrators, of the said annual sum of £——, commencing from the —— day of —— next, and to be payable until the day on which the said benefice shall next become vacant, and to be payable by equal half-yearly payments on the —— day of ——, and the —— day of —— in every year, the first of such payments to be made on the —— day of —— next (*b*). The assurance and bond to be executed as aforesaid shall be prepared by and at the expense of the purchaser, and shall be left by him before the said —— day of —— next, at the office aforesaid, for execution by the vendor. Vendor to execute assurance of advowson, and also bond to secure annual sum.

(*Remaining clauses as in Precedent No. XII.*)

IN WITNESS, &c.

for an annual sum equal to interest at the rate stipulated on the purchase-money; or (2) by investing the purchase-money in the names of trustees, upon trust to pay the income thereof to the purchaser until a vacancy. Such an arrangement has been held valid when the vendor is not the incumbent (Sweet *v.* Meredith, 3 Giff. 610); and it is conceived, though it has never been expressly decided, that the circumstance of the vendor being the incumbent would make no difference, provided that the interest made payable by the vendor during his incumbency does not exceed the ordinary rate of interest. If, however, the vendor, the incumbent, should afterwards resign, and thus become relieved from further payment of interest, a serious question might arise as to whether such resignation were not simoniacal within the meaning of the Act 31 Eliz., c. 6, sect. 7. terest on the purchase-money until a vacancy.

(*b*) Six calendar months after the day appointed for completion.

No. XV.

FOR SALE OF ADVOWSON AND INVESTMENT OF PURCHASE-MONEY UNTIL VACANCY.

AGREEMENT *for* SALE *of an* ADVOWSON, *or* NEXT PRESENTATION, *where it is part of the* ARRANGEMENT *that the* PURCHASE-MONEY *shall be* INVESTED *until a* VACANCY, *and the* INCOME RECEIVED *by the* PURCHASER (*a*).

MEMORANDUM OF AGREEMENT made the —— day of ——, BETWEEN A. B. of, &c. (*vendor*), of the one part, and C. D. of, &c. (*purchaser*), of the other part:—

Parties.

Agreement to sell and purchase.

I. THE said A. B. (hereinafter called the vendor) agrees to sell, and the said C. D. (hereinafter called the purchaser) agrees to purchase, ALL THAT, &c. (*describe advowson, or next presentation, as the case may be*), at the price of £——: the purchase to be completed in the manner hereinafter mentioned on the —— day of —— next, at the office of Mr. ——, the vendor's solicitor.

II., III., IV. (*Conditions as to delivery of abstract and time for making requisitions—as in Precedent No. I.*)

Purchase money to be invested.

V. UPON the —— day of —— next, the purchaser shall pay the said purchase-money of £—— to two trustees, one to be nominated by the vendor and the other by the purchaser, upon trust to invest the same in Bank £3 per cent. annuities, and pay the dividends thereof to the purchaser, his executors or administrators, until the said benefice shall next become vacant, and subject to the trust aforesaid, and also to Article IX., in trust for the vendor, his executors, administrators, and assigns. And upon payment of the said purchase-money as aforesaid, the vendor shall execute a proper assurance, &c., *suprà*, p. 106.

VI., VII., VIII. (*Power to rescind contract—as to interest—and on vacancy of benefice before completion vendor to present nominee of purchaser, as in Precedent No. XII.*)

Provision in case next presentation devolves on Crown.

IX. IF the next presentation shall devolve on the Crown by reason of the promotion of the present incumbent to a bishopric,

(*a*) See p. 108, *suprà*, note (*a*).

this agreement shall be void, and the Bank £3 per cent. annuities, representing the purchase-money, shall thereupon be transferred to the purchaser as his absolute property (*b*). FOR SALE OF ADVOWSON AND INVESTMENT OF PURCHASE-MONEY UNTIL VACANCY.

No. XVI.

AGREEMENT *for* SALE *where* PART *of the* PURCHASE-MONEY *is to* REMAIN *on* MORTGAGE *of the* PROPERTY *for* A CERTAIN PERIOD. FOR SALE WHERE PART OF PURCHASE-MONEY REMAINS ON MORTGAGE.

MEMORANDUM OF AGREEMENT made the —— day of ——, BETWEEN A. B. of, &c. (*vendor*), of the one part, and C. D. of, &c. (*purchaser*), of the other part :— Parties.

I. THE said A. B. (hereinafter called the vendor) agrees to sell, and the said C. D. (hereinafter called the purchaser) agrees to purchase, ALL THOSE, &c. (*parcels*), and the inheritance thereof in fee simple in possession, free from incumbrances, at the price of £3000. Agreement to sell and purchase.

II. to VI. (*Conditions as to delivery of abstract—clause for making requisitions — and errors of quantity, &c., suprà*, pp. 91, 92.)

VII. THE purchase shall be completed on the —— day of —— next, and from that day the purchaser shall be entitled to the rents and profits of the said premises, all outgoings up to that day being discharged by the vendor. If the purchase shall not be completed on the said —— day of ——, the purchaser shall pay to the vendor interest on the said purchase-money from the said —— day of ——, until the completion of the said purchase, on the sum of £1000, part thereof, after the rate of £5 per cent. per annum, and on the sum of £2000 residue thereof after the rate of £4 per cent. per annum. Time for completion of purchase.

VIII. UPON the completion of the purchase, the vendor shall execute to the purchaser a proper assurance of the said premises ; and as some of the documents of title relate to other property of the vendor, as well as to the said premises hereby Vendor to execute assurance.

(*b*) See p. 108, *suprà*, note (*a*).

FOR SALE WHERE PART OF PURCHASE-MONEY REMAINS ON MORTGAGE.

agreed to be sold, the same shall be retained by him upon his giving to the purchaser by such assurance an acknowledgment of his right to production and delivery of copies thereof, and an undertaking for their safe custody. The said assurance shall be prepared by and at the expense of the purchaser.

Part of purchase-money to remain on mortgage.

IX. UPON the completion of the purchase, the purchaser shall pay to the vendor the sum of £1000, part of the said purchase-money, and the sum of £2000 (residue thereof) shall remain on mortgage of the said premises, at interest, after the rate of £4 per cent. per annum, payable half-yearly. And by the mortgage-deed the said principal money shall be made payable on the —— day of —— next, but subject to provisoes precluding the vendor from calling in the same during a term of ten years, computed from the —— day of —— next, in case interest shall be regularly paid in the meantime within thirty days after the several half-yearly days of payment thereof respectively, and in case the purchaser shall duly observe the covenants (other than the covenants for payment of principal and interest) to be contained in the mortgage-deed; and also precluding the purchaser from compelling the vendor to receive the said principal money before the expiration of the said term. And the said mortgage shall also contain covenants by the purchaser for the payment of the principal money and interest, and such provisions for better securing the payment of the principal money and interest, as the vendor shall reasonably require.

Mortgage to be executed immediately after completion.

X. THE said mortgage shall be prepared by the vendor at the expense of the purchaser, and shall be executed by the purchaser immediately after the execution by the vendor of the assurance of the said premises to the purchaser. All the documents of title which but for such mortgage the purchaser would be entitled to have delivered to him upon the completion of the purchase, shall be retained by the vendor as mortgagee, and the transaction shall be treated in all respects as if the purchaser had duly paid the whole of the purchase-money to the vendor upon the completion of the purchase, and the vendor had immediately thereupon repaid the same to the purchaser, by way of loan upon such security as aforesaid.

IN WITNESS, &c.

No. XVII.

AGREEMENT *for* SALE *to a* RAILWAY COMPANY; PURCHASE-MONEY *to include* COMPENSATION *for* SEVERANCE; COMPANY *to* MAKE *specified* ACCOMMODATION WORKS. FOR SALE TO RAILWAY COMPANY.

MEMORANDUM OF AGREEMENT made the —— day of ——, BETWEEN A. B. of, &c. (hereinafter called "the vendor"), of the one part, and C. D. of, &c., and E. F. of, &c., two of the Directors of the —— Railway Company, incorporated by the —— Railway Act, 18— (hereinafter called "the company"), for and on behalf of the company, of the other part:— Parties.

I. THE vendor agrees to sell, and the company agrees to purchase, the pieces or parcels of land specified in the 1st schedule hereto, and the (*a*) mines and minerals (if any) thereunder, and the inheritance thereof in fee simple, free from incumbrances, for the sum of £——, such sum to be in full satisfaction and compensation for all damage to be sustained by the vendor by reason of the severing of the said lands from the other lands of the vendor, and for all other damage or injury to be sustained by such other lands by reason of the formation of the intended railway, and the execution of the works connected therewith, and to be in full satisfaction also for all accommodation works, except as provided in Article II. of this agreement. Agreement to sell and purchase.

II. THE company shall, as soon as conveniently can be, make and for ever maintain the several works specified in the 2nd schedule hereto for the accommodation of the adjoining lands of the vendor and the owners and occupiers for the time being of the same. Accommodation works.

III. THE purchase shall be completed on the —— day of ——, at the office of Messrs. ——, the vendor's solicitors, and the company shall from that day be entitled to the possession of the said premises, all outgoings up to that time being cleared by the vendor. If from any cause whatever the purchase shall Completion of purchase.

(*a*) If it is intended that the purchase shall include the mines, they must be expressly mentioned.—See Railways Clauses Consolidation Act, 1845, sect. 17.

FOR SALE TO RAILWAY COMPANY.

not be completed on that day, the company shall thenceforth pay to the vendor interest on the said purchase-money after the rate of £5 per cent. per annum.

Company, if let into possession, to pay interest.

IV. If the vendor shall let the company into possession before the said —— day of ——, the company shall pay interest on the said purchase-money after the rate aforesaid, from the day when they shall be so let into possession.

Delivery of abstract.

V. The vendor shall, on or before the —— day of ——, deliver to the company, or their solicitor, an abstract of title to the said premises, commencing at such period as the company shall require.

Vendor to execute assurance to the company.

VI. Upon the payment of the purchase-money at the time and place aforesaid, the vendor shall execute to the company a proper assurance of the said premises, such assurance to contain proper covenants and provisions for the making and maintaining by the company of the accommodation works specified in the 2nd schedule hereto, and a counterpart of such conveyance, duly executed by the company, shall be retained by the vendor. The vendor shall also give to the company an acknowledgment of the right of the said company to production of all such documents as may not be delivered up to them, and an undertaking for their safe custody.

Costs and expenses to be borne by the company.

VII. (*b*) The costs and expenses, as well of the vendor as of the company, incurred and to be incurred in or about the preparation and execution of this agreement, and the negotiation preparatory hereto (including the charges of the vendor's surveyor for his valuation of the premises), and in or about the preparation and execution of the conveyance, and the counterpart thereof, and of all other documents relating to the assurance of the said premises, and in or about the preparation of the abstract, and the deducing and verifying of the title of the vendor, and all other costs and expenses (if any) which, in the absence of any special agreement, would be payable by the company under the Lands Clauses Consolidation Act, 1845, shall be borne and paid by the company.

In witness, &c.

(*b*) By the Lands Clauses Consolidation Act, 1845 (sect. 82), all the costs of the conveyance, and of deducing the title, are thrown upon the company, but it is desirable to insert in agreements an express clause as to costs, as it might otherwise be questioned whether the statutory provision was not excluded by implication.

THE FIRST SCHEDULE ABOVE REFERRED TO.

FOR SALE TO RAILWAY COMPANY.

ALL those pieces or parcels of land situate in the parish of —— in the county of ——, containing by admeasurement ——, being parts of several pieces or parcels of land called respectively ——, and numbered ——, as regards the said parish of ——, in the plans and books of reference of the intended railway, deposited with the Clerk of the Peace for the said county, and which pieces or parcels of land, agreed to be sold by the above-written agreement, are delineated and coloured pink in the plan drawn in the margin of the schedule.

THE SECOND SCHEDULE ABOVE REFERRED TO.

(*To describe the accommodation works.*)

No. XVIII.

AGREEMENT *for* SALE *to a* RAILWAY COMPANY; POWER *to* COMPANY *to take* POSSESSION *before* COMPLETION *upon* DEPOSITING PURCHASE-MONEY.

FOR SALE TO RAILWAY COMPANY. (*Another Form.*)

MEMORANDUM OF AGREEMENT made the —— day of ——, BETWEEN A. B. of, &c. (hereinafter called "the vendor"), of the one part, and C. D. of, &c., and E. F. of, &c., two of the Directors of the —— Railway Company, incorporated by the —— Railway Act, 18—, (hereinafter called "the company"), for and on behalf of the company, of the other part:— Parties.

I. THE vendor agrees to sell and the company agrees to purchase the pieces or parcels of land specified and described in the schedule hereto, at the price of £——(*a*). Agreement to sell and purchase.

(*a*) As mines are not expressly mentioned, they will remain the property of the vendor under this agreement.—See Railways Clauses Consolidation Act, 1845, sect. 77.

FOR SALE TO RAILWAY COMPANY. (*Another Form.*)

Company to pay additional sum for severance.

II. In addition to the said purchase-money of £——, the company shall pay to the vendor the sum of £——, as and by way of compensation for all damage to be sustained by him by reason of the severing of the said lands from the other lands of the vendor, and for all other damage or injury to be sustained by such other lands by reason of the formation of the intended railway and the execution of the works connected therewith.

Accommodation works.

And the company shall be bound to make and maintain such works for the accommodation of the adjoining lands of the vendor and the owners and occupiers for the time being of the same, as in the absence of any agreement to the contrary they would be bound to make and maintain under the provisions of the Railways Clauses Consolidation Act, 1854 (*b*).

III. (*For completion of purchase and payment of interest, same as Clause III. of Precedent No. XVII.*).

Company may take possession on depositing purchase-money.

IV. If the company shall be desirous of taking possession of the lands before the actual completion of the purchase, the company shall be entitled so to do, upon depositing the purchase-money in the bank of Messrs. —— at —— in the joint names of the vendor and ——, and in such case the company shall pay interest upon the purchase-money from the time of taking possession until the completion of the purchase after the rate of £—— per cent. per annum, and the money so deposited shall remain in the bank at the risk of the company, who shall be entitled to any interest allowed by the bank thereon.

V., VI., VII. (*As in Precedent No. XVII. suprà*, p. 114.)

In witness, &c.

The Schedule above referred to.

(*b*) See as to accommodation works, the Railways Clauses Consolidation Act, 1845, sects. 68 to 75.

No. XIX.

AGREEMENT *for* BUILDING GRANT *in fee in* CONSIDERATION *of perpetual* RENTCHARGE (*a*).

FOR BUILDING GRANT.

MEMORANDUM OF AGREEMENT made the —— day of ——, BETWEEN A. B. of, &c. (hereinafter called "the vendor"), of the one part, and C. D. of, &c. (hereinafter called "the purchaser"), of the other part :— Parties.

I. WHEN and so soon as the architect or surveyor for the time being of the vendor (hereinafter called "the architect") shall have given his written certificate that the dwelling-houses hereinafter agreed to be built are completed and made fit for habitation to his satisfaction, the vendor shall effectually grant and convey all that plot &c. (*describing it*), with the appurtenances, to the uses following (that is to say), to the use that the vendor, his heirs and assigns, or a trustee nominated by him for that purpose, his heirs and assigns, may from the —— day of —— receive out of the said premises a perpetual yearly rentcharge of £—— per annum to be issuing out of and charged upon the same and payable half-yearly on the —— day of ——, and the —— day of ——, the first half-yearly payment to be made on the —— day of ——; and subject to the said rentcharge and to the statutory powers for enforcing and securing payment thereof to the use of the purchaser in fee simple.

Upon certificate of architect that buildings are complete, vendor to execute grant.

To use that vendor may take a perpetual rent.

and subject thereto to purchaser in fee.

II. THE purchaser may immediately after the execution of this agreement enter upon the said plot of ground, and erect the buildings, and otherwise proceed with the works contemplated by this agreement.

Purchaser may enter and proceed with works.

III. THE purchaser shall, within one month after obtaining possession of the said plot of ground, fence in the same with good and substantial stone walls on all the sides thereof; and shall before the —— day of ——, 18—, at his expense, under the inspection and to the satisfaction of the architect, build, cover in, and completely finish fit for habitation upon such part of

Purchaser to fence in plot,

and complete villas.

(*a*) See observations on grants of this description in a note to Precedent No. XCIV. of Purchase Deeds, *infrà*. p. 345.

FOR BUILDING GRANT.

the said plot of ground as is marked out for that purpose in the plan hereto annexed, with good freestone and all proper materials of all sorts, and in a good, substantial, and workmanlike manner, two semi-detached villas or dwelling-houses, with proper offices and outbuildings, according to a plan and elevation to be prepared by the architect and under his inspection.

Division-fences to be party-walls.

IV. Every division or boundary fence separating the said plot of ground from the adjoining plot or plots, shall (when made) be a party-wall, and a proper proportion of the expense thereof shall be paid by the grantees of the adjoining plot or plots, such proportion to be settled by the architect.

Purchaser to make drains.

V. The purchaser shall make all proper drains and sewers in such manner as shall be approved of by the architect.

As to flues.

VI. No flue or substitute for a flue shall be made in the said dwelling-houses, or in any office or building belonging thereto, but such as shall be carried into the chimney-stacks of the said dwelling-houses.

If purchaser make default in building, &c., vendor may re-enter and sell.

VII. If the purchaser shall at any time leave the works on the said plot of ground for one calendar month, or shall not complete the said dwelling-houses before the said —— day of ——, 18—, pursuant to Article 3, then it shall be lawful for the vendor or his agent, if he shall think fit so to do, to re-enter upon the said plot of ground and to take possession thereof, and of all buildings and materials whatsoever which may be thereon, and in whatever state the same may then be, either to retain the said plot of ground, buildings, and materials for his own use, or to sell the same or any part thereof by public auction or private contract, and to retain the produce of such sales for his absolute use, and to execute all such assurances as may be necessary for carrying into effect any such sale. And upon any sale purporting to be made under this clause, the purchaser shall not be bound or concerned to see or inquire whether either of the cases mentioned herein as authorizing a sale has happened.

Purchaser to accept grant.

VIII. When and so soon as the architect shall have given his written certificate that the dwelling-houses agreed to be built are completed and made fit for habitation to his satisfaction, the purchaser will accept a grant or conveyance of the plot of ground and buildings erected thereon upon the terms herein

mentioned, and shall duly execute a duplicate or counterpart thereof.

Grant to contain covenants by grantee to pay rent and taxes.

IX. The grant or conveyance shall contain the following covenants by the purchaser (that is to say); to pay the yearly rent; to repair and keep the said dwelling-houses and buildings, and the boundary-walls and drains belonging thereto, in good and tenantable repair and condition, and to permit the vendor, his heirs or assigns, and all persons authorized by him or them once in every year in the daytime on giving to the tenant or occupier for the time being of the said dwelling-houses respectively one week's notice of his or their intention so to do, to enter the said dwelling-houses and premises respectively to examine the condition thereof; and also at all times to insure and keep insured against loss or damage by fire the said dwelling-houses and buildings in the —— office or some other public insurance office in the sum of £—— at least, and on demand to produce to the vendor, his heirs or assigns, the policy or policies of insurance and the receipt for the premium payable in respect thereof for the current year, and, whenever any loss or damage by fire shall happen to the said dwelling-houses and buildings, or any part thereof, to forthwith expend the money received under such insurance as aforesaid, and also such other moneys as shall be necessary for the purpose in rebuilding or reinstating the premises; and also not to alter or permit to be altered the external plan or elevation of the said dwelling-houses and buildings respectively without the previous consent of the vendor, his heirs or assigns; and also not at any time without such consent as aforesaid to carry on or permit to be carried on upon the said premises any trade or business whatsoever, or use or permit to be used the same for any other purpose than as private dwelling-houses; nor without such consent to erect on the said plot of land any other messuage or building than the dwelling-houses and buildings so to be erected as aforesaid, except a stable or coach-house or greenhouses or conservatories in connection with the said dwelling-houses respectively.

To repair.

To insure.

Not to carry on any trade or use premises except as private dwelling-houses, without vendor's consent.

Not to erect other buildings without grantor's consent.

Grant to contain power of re-entry.

X. The grant or conveyance shall also contain a power of re-entry by the vendor, his heirs or assigns, in case the said yearly rent or any part thereof is in arrear for one year or in case of the breach of any of the purchaser's covenants therein contained.

FOR BUILDING GRANT.

Also usual covenants, &c.

XI. The grant or conveyance shall also contain such other covenants, clauses, and provisions as are usual in conveyances of the like nature, or shall be otherwise requisite or proper for carrying into effect this agreement.

Grant, by whom, and at whose cost to be prepared.

XII. The said grant or conveyance, and the counterpart thereof, shall be prepared by Mr. ——, and shall be at the cost of the purchaser.

Vendor's title accepted.

XIII. The purchaser has examined the vendor's title, and is satisfied therewith, and he hereby accepts the same.

In witness, &c.

No. XX.

FOR LOAN OF MONEY ON MORTGAGE.

AGREEMENT *for the* Loan *of a* Sum *of* Money *on* Mortgage (*a*).

Parties.

MEMORANDUM OF AGREEMENT made the —— day of —— Between A. B. of —— (*intended mortgagor*), of the one part, and C. D. of —— (*intended mortgagee*), of the other part :—

Agreement to lend.

I. The said C. D. shall lend to the said A. B. the sum of £2000 upon mortgage of the freehold and copyhold messuages, lands, and hereditaments situate in the parish of ——, in the county of ——, the short particulars whereof are stated in the schedule hereto, provided that the said A. B. shall before the —— day of —— next deduce a good marketable title to the said premises, [and provided also that the said premises shall be valued by R. H., of &c., or such other competent land sur-

(*a*) When a negotiation has been entered into for the loan of money on mortgage, and it is contemplated that the investigation of the title will be attended with expense, it is prudent on the part of the intended mortgagee to have an agreement in writing, as, if the title should turn out defective, or for any other reason the mortgage should not eventually be completed, there may in the absence of an agreement be a difficulty in recovering the expense incurred.

veyor as shall be appointed for that purpose by the said C. D., at the sum of £3000 at least, clear of all outgoings] (*b*). And the said loan shall be made and the said mortgage shall be completed on the —— day of —— next, and time shall be deemed of the essence of the contract. FOR LOAN OF MONEY ON MORTGAGE.

II. The principal money to be secured by the said mortgage shall be made payable at the expiration of six calendar months from the date thereof, and shall bear interest from the date thereof, after the rate of £—— per cent. per annum, payable half-yearly, and the said mortgage shall contain covenants by the mortgagor for payment of the said principal money and interest, and shall also contain such powers and provisions as the mortgagees shall reasonably require for better securing the payment of the principal money and interest. As to provisions of mortgage deed.

III. All costs and expenses of and incidental to this agreement, and the negotiation preparatory hereto, and the mortgage to be made in pursuance hereof (including the investigation of the title, and the valuation of the premises) shall be paid by the said A. B., whether the mortgage shall eventually be completed or not, and whether such non-completion shall arise from [the premises not being of sufficient value, or from] the title proving defective, or from any other cause (not being the wilful default of the said C. D.). Costs to be borne by mortgagor.

In witness, &c.

The Schedule above referred to.

(*b*) The words within brackets will be omitted where the intended mortgagee is satisfied as to the value.

No. XXI.

FOR LOAN OF MONEY ON MORTGAGE.

AGREEMENT *for the* LOAN *of a* SUM *of* MONEY *on* MORTGAGE, *with* PROVISIONS *for continuing the* LOAN *for a* TIME CERTAIN, *and for the* APPOINTMENT *of a* RECEIVER.

ARTICLES OF AGREEMENT made the —— day of ——,

Parties. BETWEEN A. B. of —— (*intended mortgagor*), of the one part, and C. D. and E. F. of —— (*intended mortgagees*), of the other part:—

Agreement to lend. I. THE said C. D. and E. F. agree to lend to the said A. B. the sum of £7500 upon mortgage of the freehold and copyhold messuages, lands, and hereditaments situate in the parish of ——, in the county of ——, the short particulars whereof are stated in the schedule hereto, provided that the said A. B. shall before the —— day of —— next deduce a good and marketable title to the said premises, and provided also that the said premises shall be valued by R. H. of &c. or such other competent land surveyor as shall be appointed for that purpose by the said C. D. and E. F., at the sum of £10,000 at least, clear of all outgoings. And the said loan shall be made and the said mortgage shall be completed on the —— day of —— next, and time shall be deemed of the essence of the contract.

As to provisions of mortgage deed. II. THE principal money to be secured by the said mortgage shall be made payable at the expiration of six calendar months from the date thereof, and shall bear interest from the date thereof, after the rate of £—— per cent. per annum, payable half-yearly and to be reduced to £—— per cent. per annum, in case the same shall be regularly paid within thirty days after the respective half-yearly days of payment thereof, and the said mortgage shall contain covenants by the mortgagor for payment of the said principal money and interest, and shall also contain provisions precluding the mortgagees from calling in the principal money before the expiration of seven years from the date of the mortgage, in case of such regular payment of interest as aforesaid, and also precluding the mortgagor from compelling the mortgagees to receive the same within the like period of

seven years. The said mortgage shall also contain such other powers and provisions as the mortgagees shall reasonably require for better securing the payment of the principal money and interest. FOR LOAN OF MONEY ON MORTGAGE.

III. The mortgagees may, by a deed to be executed simultaneously with the mortgage, appoint a receiver of the rents and profits of the said premises, with such powers and duties as the mortgagees may think fit, for the purpose of better securing the regular payment of interest, and with such clauses and provisions for removing the receiver, and appointing new receivers from time to time, and otherwise, as are usually inserted in deeds of the like nature, including a proviso that the receiver shall not act until interest shall have become in arrear for one calendar month; and the said A. B. shall (if required) join in such receivership deed. Mortgagees may appoint a receiver.

IV. All costs and expenses of and incidental to this agreement, and the negotiation preparatory hereto, and the mortgage to be made in pursuance hereof (including the investigation of the title, and the valuation of the premises), shall be paid by the said A. B., whether the mortgage shall eventually be completed or not, and whether such non-completion shall arise from the premises not being of sufficient value, or from the title proving defective, or from any other cause (not being the wilful default of the said C. D. and E. F., or either of them). Costs to be borne by mortgagor.

In witness, &c.

The Schedule above referred to.

No. XXII.

AGREEMENT *to* Submit *to* Arbitration.

TO SUBMIT TO ARBITRATION.

THIS INDENTURE, made the —— day of ——, Between A. B. of &c., of the one part, and C. D. of &c., of the other part. *(Recite lease by A. B. to C. D. for twenty-one years—also commencement of action by A. B. for recovery of possession of the* Parties.

TO SUBMIT TO ARBITRATION.

premises, on the ground of a breach of covenant.) AND WHEREAS the parties hereto are desirous to put an end to the said action, and for that purpose have respectively agreed to refer the subject thereof to arbitration in manner hereinafter mentioned. NOW THIS INDENTURE WITNESSETH that in pursuance of the said agreement, each of the parties hereto, so far as the covenants herein contained are to be performed by him, doth hereby for himself, his heirs, executors, and administrators, agree with the other of them, his executors and administrators, in manner following (that is to say):

Recite agreement to refer.

Each party covenants to refer certain questions.

Reference.

I. IT shall be, and is hereby, referred to E. F. of &c., and L. M. of &c., or in case of their disagreement to their umpire, to award and determine:

1. WHETHER any of the covenants contained in the said lease have been broken, and if so, in what respect.
2. IF there has been a breach of covenant, whether the term granted by the lease has become forfeited, and the said C. D. ought to quit and deliver up possession of the said premises to the said A. B., and within what time, and whether the said C. D. ought to pay any, and what sum or sums of money to the said A. B. by way of damages for or in respect of such breach or breaches of covenant.
3. IF there has been a breach of covenant, and the said C. D. shall nevertheless be permitted to remain in possession of the premises, then what acts, matters, and things (if any) ought to be done and performed by him in order to remedy the breach or breaches of covenant and make good all damage or injury occasioned thereby.
4. BY and to whom the costs of the said action and of this reference ought to be paid, and whether the same respectively ought to be paid as between attorney and client, or as between party and party.
5. ALL other matters in controversy which may arise out of the said action, or this reference, or in any wise incidental thereto.

Referees to appoint umpire.

II. THE said E. F. and L. M. shall, within fourteen days from the date of these presents, appoint an umpire.

Arbitration.

III. THE said arbitration shall be conducted in all respects

according to the provisions as to arbitration contained in the Common Law Procedure Act, 1854, and shall have all the incidents and consequences of an arbitration under that Act. TO SUBMIT TO ARBITRATION. how to be conducted.

IV. The parties hereto will abide by and observe the said award in all respects. Parties to abide by award.

In witness, &c.

No. XXIII.

AGREEMENT *by two* Tenants *in* Common *for* Partition. FOR PARTITION.

MEMORANDUM OF AGREEMENT made the —— day of ——, Between A. B. of &c. (*one tenant in common*), of the one part, and C. D. of &c. (*other tenant in common*), of the other part, Whereas the said parties hereto being seised of the hereditaments comprised in the two several schedules hereto as tenants in common in fee simple, have agreed to make partition thereof upon the terms hereinafter expressed. Now it is hereby agreed between the said parties hereto as follows: Parties. Recital of seisin.

I. The hereditaments comprised in the 1st schedule hereto shall, as from the —— day of —— next, be the property in severalty of the said A. B., and the hereditaments comprised in the 2nd schedule hereto shall, as from the same day, be the property in severalty of the said C. D. Agreement for partition.

II. Inasmuch as the hereditaments comprised in the 1st schedule hereto are of greater value than the hereditaments comprised in the 2nd schedule hereto, the said A. B. shall pay to the said C. D. such a sum of money, by way of equality of partition, as shall be determined and awarded by E. F. of &c., and G. H. of &c., or in case of their disagreement by their umpire, to whom the same is referred accordingly, with interest for the said sum, after the rate of £4 per cent. per annum, computed from the —— day of —— next, and the said reference shall be in conformity in all respects to the provisions as to arbitration contained in the Common Law Procedure Act, 1854. Money to be paid by one to the other for equality of partition.

III. When and so soon as the sum to be paid for equality of Parties to

FOR PARTITION.

partition shall be ascertained and paid, with interest thereon as aforesaid, the parties hereto shall respectively execute and do such assurance or assurances and things as shall be necessary for effecting the partition hereby agreed upon.

execute mutual assurances.

As to title deeds.

IV. The documents of title which relate as well to the hereditaments comprised in the 1st schedule hereto, as also to the hereditaments comprised in the 2nd schedule hereto, shall be retained by the said A. B., and he shall give to the said C. D. an acknowledgment of his right to production and delivery of copies thereof, and an undertaking for their safe custody.

Costs.

V. All the costs and expenses of, and incidental to this agreement, and the partition to be made in pursuance hereof, shall be paid by the said A. B. and C. D. in equal shares.

In witness, &c.

The First Schedule above referred to.

The Second Schedule above referred to.

No. XXIV.

BUILDING CONTRACT.

BUILDING CONTRACT.

MEMORANDUM OF AGREEMENT made the —— day of ——, Between A. B. of &c., and C. D. of &c., builders and copartners (hereinafter called "the builders"), of the first part, and E. F. of &c., G. H. of &c., and I. K. of &c., carrying on the business of bankers, in copartnership under the name or style of E. F. and Company, of the second part. Whereas the said parties hereto of the second part being desirous that a banking-house with suitable offices shall be erected on a certain piece of ground belonging to them, situate in —— Street, in the city of ——, have appointed L. M. of &c., to be the architect for that purpose. And whereas plans, drawings, and elevations of the said

Parties.

Recite that parties of second part are desirous of having a banking-house erected.

Appointment of architect.

intended banking-house and offices, and a specification of the works to be done, and of the materials to be provided in and for the erection of the same, have been prepared by the said L. M., and approved of by the parties hereto of the second part. And whereas the builders are willing to contract for the execution of the said works for the sum of £——. And whereas the said plans, drawings, elevations, and specification have been signed by the builders and by the said L. M., and are annexed by way of schedule to this agreement, and duplicates of the same respectively are intended to be deposited with the clerk of the works to be employed as hereinafter mentioned, for the use and inspection of the builders, who are to have access thereto at all times for the purpose of carrying on the said works. And whereas it is intended that the due performance of this contract shall be secured by the joint and several bond of the builders, and of N. O. of &c., and P. Q. of &c., as sureties for the builders :

BUILDING CONTRACT.

That plans, &c., have been prepared.

That builders are willing to contract.

That plans, &c., have been signed by builders and architect.

Agreement that contract shall be secured by bond.

Now it is hereby agreed between the parties hereto as follows :

I. The builders will well and substantially erect and complete the said banking-house and offices in a good, lasting, and workmanlike manner, according to the instructions and directions and in the manner expressed or contained in the said specification, plans, drawings, and elevations; and will provide, execute, perform, and fully complete all and singular the materials and works respectively specified, required, and set forth in the said specification, plans, drawings, and elevations, or to be implied therefrom, or to be incidental thereto, or to be hereafter specified or required in such explanatory instructions and drawings (being in conformity with the said original specification, plans, drawings, and elevations), and also in such additional instructions and drawings (not being so in conformity as aforesaid) as shall, from time to time, during the progress of the said works hereby contracted for, be provided by the said L. M. or other the architect for the time being of the parties hereto of the second part; and will complete all the said works with the materials of the best quality, and in the most substantial and workmanlike manner, and to the satisfaction of the said L. M., or such other architect as aforesaid, without reference to any other person; and will, in all respects, comply with and

Builders to erect banking-house according to specification, &c.

BUILDING CONTRACT.

abide by the true intent and meaning of the said specification, plans, drawings, and elevations, and of this agreement.

To cover in and complete by certain dates, or otherwise to pay a fixed penalty.

II. The builders will cover in the roof of the said banking-house on or before the —— day of ——, and will finish and complete the said banking-house and offices on or before the —— day of ——; and if the said banking-house and offices shall not be completed on or before the said —— day of —— the builders shall forfeit, out of the moneys which shall be due to them by virtue of this agreement, the sum of £10 for every day which shall elapse after the —— day of ——, until the said banking-house and offices shall be completed. Provided always, that in case the builders shall be prevented by any strike among the workmen from complying with this article, the architect may extend the time for the completion of the works for such reasonable period as he may think fit.

If builders become bankrupt, &c., architect may, after notice, employ others to complete works.

III. If the builders shall become bankrupts, or shall from any cause whatever be prevented from or delayed in proceeding with and completing the said works according to the terms and conditions of this present contract, or shall not proceed in the said works to the satisfaction of the said L. M., or such other architect as aforesaid, it shall be lawful for the said L. M., or such other architect as aforesaid, to leave or cause to be left at the usual place of abode or business of the said builders, or any of them, or of their sureties or either of them, a notice or notices in writing for the said builders to proceed regularly and effectually with the said works; and in case the said builders shall, for seven days after such notice is so left as aforesaid, make default in regularly and effectually proceeding with the said works, it shall be lawful for the said L. M., or such other architect as aforesaid, to employ any other workman, either by contract or measure and value or otherwise, to proceed with the said works and complete the same, and pay to the said workman out of the moneys which shall be then due to the said builders on account of this contract, the amount of their charges for the same and for all necessary materials to be found and provided for such completion; and the moneys which previously to such default shall have been paid to the said builders on account or in respect of any work or materials then already done, executed, or provided by them, shall be considered as the full payment and satisfaction, not only for the said work and materials in

respect of which such payments shall have been made, but also for any other work and materials which the said builders shall then have done, executed, or provided, although no such payment shall have been previously made in respect thereof; and all the balance and moneys whatsoever which then or afterwards would have become payable or due to the said builders under this present contract, if this present clause had not been inserted, together with all the materials then delivered for the purpose of the works hereby contracted for and then being upon or about the site of the said banking-house and offices, shall, upon such default as aforesaid, become the absolute property of the said parties hereto of the second part; and if the said balance, moneys, and materials so forfeited and to become the property of the parties hereto of the second part as aforesaid be insufficient to cover such charges for workmen and materials as are last hereinbefore directed to be paid thereout, then and in such case the said builders shall and will make good and pay such deficiency upon demand.

Architect may remove workmen for incompetency or other causes

IV. If the said L. M., or such other architect as aforesaid, shall at any time or times consider any of the workmen employed by the said builders on the works as in anywise incompetent, or as acting improperly, it shall in every such case be lawful for the said L. M., or such other architect as aforesaid, to discharge such workman or workmen, and the said builders shall without delay put another workman or other workmen in his or their place.

Architect to appoint a clerk of the works.

V. The said L. M., or such other architect as aforesaid, may appoint a suitable person to be clerk of the works, to superintend the works hereby contracted for, and to be constantly on the premises during their progress; and the clerk shall be paid by the parties hereto of the second part.

Architect or clerk of the works may remove unsound materials.

VI. In case any of the materials to be brought on the said premises by the said builders shall be considered by the said L. M., or such other architect as aforesaid, or the said clerk of the works, unsound or in any respect improper, the said builders will, upon notice in writing to them or their foreman on the premises, given by the said L. M., or such other architect as aforesaid, or by the said clerk of the works, cause the same to be removed from off the ground, and proceed with the said works with materials corresponding with the said specification

BUILDING CONTRACT.

and instructions, and approved of by the said L. M., or such other architect as aforesaid; and in default of such removal within three days after such last-mentioned notice, it shall be lawful for the said L. M., or such other architect as aforesaid, to cause the same to be removed to such place or places as he may think proper, without being in anywise answerable or accountable for any loss or damage that shall happen to any materials so removed as aforesaid, and to cause proper materials to be substituted for the same, and to pay all expenses attending such removal and substitution out of the moneys which shall become due to the said builders by virtue of this contract.

Builders to take down unsound work and rebuild.

VII. In case the said L. M., or such other architect as aforesaid, shall consider any part of the said works to be executed in an unsound and improper manner, the said builders will cause the same immediately to be taken down and executed in a proper manner, and to the satisfaction of the said L. M., or such other architect as aforesaid, without any extra charge or expense whatever.

Power to architect, or parties of the second part, to direct additions, or alterations.

VIII. If the said L. M., or such other architect as aforesaid, or the parties hereto of the second part, shall think proper at any time or times to make any alterations or additions to or omissions in the works hereby contracted for, he or they shall give to the said builders written instructions for such alterations, additions, or omissions, signed by the said L. M., or such other architect as aforesaid; but the said builders shall not be considered to have authority for any alteration, addition, or omission, or to make any claim for the value or otherwise in respect thereof, without such written instructions so signed as aforesaid; and should any alteration or addition be charged for or brought into any day account, the said day account shall be delivered at the office of the said L. M., or such other architect as aforesaid, on the Tuesday morning next ensuing after such day work may have been done, signed by the clerk of the works, and no account unless so signed and delivered shall be admitted by the said L. M., or such other architect as aforesaid.

Value of alterations, &c., to be ascertained and added to original contract money.

IX. Any such alteration, addition, or omission shall not vacate this present contract, but shall be ascertained by an admeasurement or valuation, to be made by the said L. M. or such other architect as aforesaid, and the value thereof so ascertained shall be added to or deducted from the said sum of

£——, as the case may be, and the addition in value (if any) shall be paid for in the same manner and at the same time as hereinafter is expressed for the payment of the ultimate balance of the said sum of £——. BUILDING CONTRACT.

X. Any deviation made in the said works from the said original plans, drawings, elevations, and specification (except such deviations as shall be so ordered as last aforesaid) shall be altered and corrected at the costs and expenses of the said builders. Any unauthorized deviations to be corrected at expense of builders.

XI. Any damage arising from accidents or carelessness of workmen or otherwise to the said works hereby contracted for, or to the materials or implements therein used, shall be borne and effectually made good by the said builders at their own costs and charges. Builders to repair damage.

XII. The said builders shall at their own costs and charges insure, in some or one of the offices for insurance against fire in London or Westminster, to be approved of by the said parties hereto of the second part, and in the joint names of the said builders and of some person appointed in that behalf by the parties hereto of the second part, the said buildings from loss or damage by fire in the sum of £——, and shall continue such insurance until the said L. M. or such other architect as aforesaid shall certify the said banking-house and offices to be completed. Builders to insure.

XIII. The said builders shall pay all the fees of the district surveyor, or other fees or official demands arising from the execution of the said works, and will generally do, execute, and provide not only all the works and materials described and specified in the said plans, drawings, elevations, and specification respectively, but likewise all such works and materials as are necessarily implied or may be reasonably inferred in or from the said plans, drawings, elevations, and specification respectively, for the erection and completion of the said buildings, with the offices and appurtenances, although the same may not happen to be therein expressly mentioned as to be done by the said builders, the true intent and meaning of these presents being that the works and materials hereby contracted to be done, executed, and provided, shall include all that is requisite for the building and completing the said building and Builders to pay fees of district surveyor, and generally to execute all works described in specification, &c., or to be implied therefrom.

BUILDING CONTRACT.

offices according to the said plans, drawings, elevations, and specification.

Builders not to make sub-contract without consent.

XIV. THE said builders will not, unless with the consent of the said L. M., or such other architect as aforesaid, make any sub-contract for the execution of the works hereby contracted for, or any part thereof, nor, unless with such consent as aforesaid, assign or underlet this present contract.

The contract-money to be paid by instalments.

XV. THE said sum of £—— shall be paid to the said builders in manner following (that is to say), £—— part thereof shall be paid by twelve instalments of £—— each, upon the certificate from time to time of the said L. M., or such other architect as aforesaid, that work and materials to a sufficient amount shall have been done, executed, or provided by the said builders to the satisfaction of the said L. M., or such other architect as aforesaid, and £——, the balance of the said sum of £——, shall be paid within three calendar months after the whole of the said works shall be completed and finished, and the accounts made up.

Balance to be paid on certificate of architect of completion of works.

XVI. THE said builders shall not be entitled to demand or receive the said balance of £—— until the said L. M., or such other architect as aforesaid, shall certify under his hand that the whole of the said works have been completed and finished to his satisfaction.

Decision of architect to be final.

XVII. THE decision of the said L. M., or such other architect as aforesaid, with respect to the amount, state and condition of the works actually executed, and also in respect to any and every question that may arise concerning the construction of the present contract, or the said plans, drawings, elevations, and specification, or the execution of the works hereby contracted for, or in anywise relating thereto, shall be final and without appeal.

IN WITNESS, &c.

No. XXV.

AGREEMENT *to procure* LETTERS PATENT, *and to* SELL *a* MOIETY *of the* INVENTION *and the* BENEFIT *thereof.* AS TO LETTERS PATENT.

MEMORANDUM OF AGREEMENT made the —— day of ——, BETWEEN A. B. of, &c. (*vendor*), of the one part, and C. D. of, &c. (*purchaser*), of the other part. WHEREAS the vendor hath recently discovered certain improvements in ——, and intends forthwith to apply for Her Majesty's Letters Patent for special licence and privilege to make, use, exercise, and vend the invention for his use, for the term of —— years. Parties. Recite discovery of invention.

I. THE said A. B. (hereinafter called the vendor) shall sell, and the said C. D. (hereinafter called the purchaser) shall purchase one moiety or equal half part or share of and in the said invention, and all improvements whatsoever which the vendor shall hereafter make or discover therein, and of and in all letters patent which the vendor shall obtain in respect of such invention and improvements, and all advantages incident to or to be derived from the same, for all the term for which such letters patent shall be granted, and for such renewed and additional term or terms as shall hereafter be granted therein, at the price of £——. Agreement to sell and purchase one moiety of the invention.

II. THE vendor shall, within —— days next after the date of this agreement, apply and petition for the said letters patent and shall follow up such petition by all proceedings and means necessary and usual in such cases, so that the letters patent may be obtained and the specification duly enrolled as soon as possible, and the vendor shall pay all fees and expenses attendant on obtaining the said letters patent. Vendor to obtain letters patent.

III. WITHIN —— days after such letters patent shall be granted, the purchaser shall pay to the vendor the said purchase-money, and the vendor shall execute to the purchaser an assignment of the said moiety, such assignment to be prepared by and at the expense of the purchaser, and to be left by him at the office of Mr. ——, for execution by the vendor; and the said assignment shall contain (amongst other things) a covenant on the part of the vendor not to do, or assent to, or cause to be As to completion of purchase.

AS TO LETTERS PATENT.

done, any act, deed, matter, or thing, whereby the said letters patent shall be forfeited or invalidated, or the right of the purchaser to his share thereof be affected, and a provision that the business of the said letters patent shall be managed and conducted by the vendor, and that he shall keep regular accounts of the same, and that such accounts shall be at all times open to the inspection and examination of the purchaser, who shall have full power to take copies of or extracts from the same.

Agreement to be voidable in a certain case.

IV. If the said letters patent shall not be obtained before the —— day of —— next, this agreement shall be voidable by the purchaser.

In witness, &c.

ABSTRACTS, SEARCHES FOR INCUMBRANCES AND PURCHASE DEEDS.

Preface.

When a binding contract for sale of lands has been entered into, whether upon a public auction, or a private sale, the next step in the transaction is for the vendor to furnish to the purchaser an abstract of title, and to verify such abstract. If the purchaser is satisfied with the title as disclosed by the abstract, he makes the usual searches for incumbrances in the proper office or offices, and if the result of this search is also satisfactory, the sale is carried into effect by a deed of conveyance, and by payment of the purchase-money. It is deemed convenient to introduce in this place three Dissertations :—I. On Abstracts and their verification. II. On searches for incumbrances ; and III. On Purchase Deeds.

I.—ABSTRACTS AND THEIR VERIFICATION.

Commencement of title.

Unless the conditions or agreement for sale stipulate to the contrary, on the sale of freeholds or copyholds the title must be deduced for a period of forty years, that period having been substituted for sixty years by the Vendor and Purchaser Act, 1874. And in cases where an earlier title than sixty years might have been required under the former practice, an earlier title than forty years may now be required (*a*).

A purchase-deed, or marriage settlement, is a good instrument with which to commence the abstract. If the title commences with a general devise contained in the will of a person who died forty years since, then, in absence of any stipulation to the contrary, proof by old

(*a*) Vendor and Purchaser Act, sec. 1.

leases, declarations, receipts of rent, parish books, &c., &c., should be supplied that he was in possession of the estate, or in the receipt of the rents and profits thereof, at the time of his decease. If the abstract commences with an appointment, the purchaser was until the recent Act entitled to have the instrument creating the power abstracted, but it is now provided by the Conveyancing Act, 1881, that in such case the deed creating the power need not be abstracted (*b*). It is apprehended that, notwithstanding the recent Act, an admission to copyholds is not a proper commencement of title without the surrender on which the admission is grounded. In a word, it is necessary that, subject to the statutory conditions, the title should be properly commenced, and satisfactorily deduced as to the legal as well as the equitable estate, the abstract showing that the vendor is entitled to the lands and the inheritance thereof in fee simple in possession, free from all incumbrances, except such as can be satisfied.

As to right of purchaser to inspect ancient deeds.

It is clear that under the recent Act a purchaser is not entitled before completion to the production and inspection of deeds, whether in the vendor's possession or not, of earlier date than the deed forming the stipulated rule of title, though he will be entitled to have them handed over to him on completion, if they relate to no other property.

Inquiry as to existing leases.

If the property is subject to any existing leases, the vendor should allow the purchaser to inspect the counterparts, so that it may be seen that they contain no unusual provision in favour of the lessee,—as for instance, a right of pre-emption—and that the lessor has entered into no covenant which could prove a burthen on the estate in the hands of the purchaser.

What abstract should state.

From the document which commences the title every deed, instrument, incumbrance, and fact, relating to, or affecting the title, should be stated in the abstract, except leases which have expired by effluxion of time. Thus, a mortgage deed must be abstracted although the money may have been repaid, and the property has been reconveyed.

(*b*) Sec. 3, sub-sec. 3.

Where there has been a mere equitable mortgage, which has been discharged, it is usual not to mention it in the abstract, and Mr. Dart approves of and defends the practice (*d*), notwithstanding the opinion to the contrary of Vice-Chancellor Wood (*e*). Equitable mortgages.

Deeds which do not affect and never have affected the right to sell or dispose of the property, although they may confer some beneficial interest in it, need not, it is conceived, be abstracted. Thus where a mortgage is made to persons by one deed, and by another it is declared that the mortgagees are trustees for others, the latter need not be abstracted. Deeds not affecting right to sell need not be abstracted.

If land has been conveyed to a trustee for sale, and the trusts of the proceeds of sale and of the rents and profits until sale are declared by a separate deed, it will be necessary in future to abstract both deeds in order to show that the sale is made with the consent of the person beneficially entitled to the rents and profits as tenant for life, such consent being rendered necessary by the Settled Land Act, 1882 (*ee*). But if the first deed declares the trusts of the rents and profits until sale and the second one only declares the trusts of the proceeds of the sale, the second need not be abstracted. When land is conveyed to trustee for sale, whether separate deed declaring trusts of proceeds need be abstracted.

Any judgments, crown debts, executions, extents, or *lis pendens* which affect the property, should be mentioned in the abstract. Judgments, &c.

The purchaser, or his solicitor, is entitled and should never neglect to examine the abstract with the deeds, wills, and other instruments relating to the title, or with attested or official copies of them, nor should he omit to make the proper searches for incumbrances. What purchaser should do.

Articles before marriage, in pursuance of which settlements have been made, should be abstracted, as well as the settlements themselves, to show that the articles were duly carried into effect. As to settlements made in pursuance of articles.

When it is necessary to show the birth, death (*f*), or marriage of any person, the fact must be proved either Births, &c., proved by certificates.

(*d*) 1 Dart, V. & P. p. 301, 5th edition.

(*e*) Drummond *v.* Tracey, Johns. 608.

(*ee*) Sec. 56, sub-sec. 2.

(*f*) As to what amounts to presumption of death, see Doe *v.* Nepean, 5 B. & Ad. 86; *In re* Beasney's trust, L. R. 7 Eq. 498; *In re* Phenés' trust, L. R. 5 C. A. 139; *In re* Lewes' trusts, L. R. 6 C. A. 356.

by a recital or statement contained in some deed, instrument, act of parliament, or statutory declaration, dated twenty years before the date of the contract (*g*), or by a certificate obtained from the proper registers (*h*). Certified extracts from non-parochial registers, which, under the 3 & 4 Vict. c. 92, are deposited with the Registrar-General, are now made evidence by that Act (*i*).

On claim by descent.

When the title, or any portion of it, depends on a claim by descent, the facts supporting the pedigree must be proved, either by recitals or statements in deeds, &c., twenty years old (*j*), or by the strict legal evidence of such facts, if it can be procured. If not, extracts from parish books, family Bibles, old books or papers, inscriptions, tombstones, or the declarations of old persons, will often be admissible as proof.

Proof of failure of issue.

When prior estates are alleged not to have vested for default or failure of issue, the same proof of want of issue must be shown as is required to verify a pedigree.

Proof of wills.

In the case of wills, the abstract is verified by production of the probate, or an office copy, which is now sufficient evidence as to real as well as personal estate (*k*).

Evidence of fine.

A fine is proved by the chirograph, or an exemplification under the seal of the Court, or by a copy examined with the roll, and passed by the examiner (*l*).

Recovery.

The best evidence of a recovery is an exemplification, or a copy examined with the roll.

Execution of deeds, &c.

It must be seen that every document has been properly executed and attested, and that the proper stamps have been affixed. Where enrolment, registration, or acknowledgment is necessary, it must be ascertained that the documents have been properly enrolled, registered, or acknowledged, according to the provisions of the statutes making these formalities necessary.

Receipt for consideration.

When the consideration is money, it must be seen that a receipt is endorsed on the deed if dated before the 1st

(*g*) Vendor and Purchaser Act, 1874, sec. 2, rule 2.
(*h*) See 6 & 7 Wm. 4, c. 86; 1 Vict. c. 22; 16 & 17 Vict. c. 134.
(*i*) Sec. 9.
(*j*) Vendor and Purchaser Act, 1874, sec. 2, rule 2.
(*k*) See the Probate Act, 20 & 21 Vict. c. 77, sec. 64.
(*l*) Burt. Comp. 487; Dart, V. & P. 210.

of January, 1882, but as to a deed dated on or after that day it is sufficient if the receipt is contained in the body of the deed *or* endorsed on it (*ll*).

The recital of a lease for a year executed before the 4 & 5 Vict. c. 21, is by that Act made conclusive evidence of its due execution.

Outstanding interests.

It should be seen, that there is no outstanding interest such as dower, free-bench, curtesy, or any other unsatisfied charge. Although, more than twelve or twenty years may have elapsed since legacies, &c., and sums charged on the land became payable, the receipts or a release must be obtained from the person entitled to these charges, as the claims on their account may still be subsisting by infancy, or other disability, or by some intermediate acknowledgment (*m*).

As to due execution of powers.

When powers have been executed it must be ascertained that they have been exercised with the needful formalities. If, for instance, the power is to be executed by a deed, "signed, sealed, and delivered in the presence of and attested by two credible witnesses," it should be seen that the attestation clause expresses all this to have been done (*n*).

The 12th section of the 22 & 23 Vict. c. 35, provides that a deed thereafter executed in the presence of and attested by two or more witnesses in the manner in which deeds are ordinarily executed and attested, shall so far as respects the execution and attestation thereof be a valid execution of a power by deed or instrument not testamentary, notwithstanding that such deed or instrument may require some additional or other forms of execution or attestation, but not so as to defeat any direction in the instrument creating the power that the consent of any person shall be necessary to a valid execution. As the ordinary form of attestation of deeds is "signed, sealed, and delivered," &c., it would seem that where the power

(*ll*) See Conveyancing Act, 1881, secs. 54, 55.

(*m*) Shields *v.* Rice, 3 Jur. 950; Cooke *v.* Soltau, 2 Sim. & Stu. 154; 3 & 4 Wm. 4, c. 27, sec. 40.

(*n*) See Wright *v.* Wakeford, 17 Ves. 454. Notwithstanding the observations on this case in Vincent *v.* Bishop of Sodor and Man, 4 De G. & Sm. 294; and *Re* Rickett's Trusts, 1 J. & H. 70, it must still be regarded as an authority for the precise point decided by it. See also Burdett *v.* Spilsbury, 10 Cl. & Fin. 340.

requires all these formalities, it might be made a ground of objection that either of them is omitted from the attestation clause.

With regard to wills, however, it is provided by the Wills Act that a will executed as required by the Act shall as far as respects the execution and attestation thereof be a valid execution of a power notwithstanding that some additional or other form or solemnity should be required by the instrument creating the power (*o*).

Inquiry as to settlements.

It may sometimes also be desirable to inquire, whether any settlement affecting the estate has been executed which has not been noticed in the abstract; but in all these cases the expediency of making such inquiries must depend upon the particular condition of the title, and the circumstances or suspicions which it suggests.

Proceedings in insolvency and bankruptcy.

If any portion of the title depends on proceedings in bankruptcy, the abstract must be verified by the production of certified copies of such proceedings.

Identity.

When the description of the parcels has been altered, or they are not sufficiently described in the deeds, proof of identity by leases, parish assessments, receipts for rent, declarations, or other evidence, should be supplied.

Proof of enrolled deeds.

As to deeds which require to be enrolled, they are proved by production of examined copies of the originals; but if the originals are in the custody of the vendor, the purchaser would be entitled to their production.

Land-tax.

If the property is sold discharged from land-tax, the redemption of the land-tax is shown by the certificate of the Commissioners, with the receipt of the cashier of the Bank of England, and memorandum of registration (*p*).

Proof of intestacy.

When a person seised or entitled is stated to have died intestate, letters of administration are the best evidence of intestacy, and should be produced. If the deceased owner had made a will, but died intestate as to the parti-

(*o*) Sec. 10.

(*p*) 42 Geo. 3, c. 116, sec. 38; Buchanan *v.* Poppleton, 4 Jur. N. S. 414. Land-tax redeemed under 38 Geo. 3, c. 60, or under 42 Geo. 3, c. 116, is personal estate. The 16 & 17 Vict. c. 117, sec. 2, provides for the merger of all land-tax redeemed under any contract entered into after the 20th August, 1853.

cular property, the will should be mentioned in the abstract, with a statement that it contains no devise or bequest of the land in question.

When the title-deeds are lost or destroyed, the vendor must prove the fact of the loss or destruction, and must also furnish the purchaser with the means of showing what were the contents of the destroyed deeds, and of proving that such deeds were duly executed (*q*). Evidence when title-deeds are destroyed.

If the deed was executed by attorney, the power or letter should be produced, and proof should be given that the principal was living at the time when the attorney executed ; and if the power was not supported by a valuable consideration, the purchaser must be supplied with proof that the principal had not revoked the power prior to the deed, which was executed in pursuance of it. Lord St. Leonards suggests, that where purchase-money is paid to such an attorney, he should execute a declaration of trust of the purchase-money for the purchaser, until he is furnished with conclusive evidence that the vendor was alive at the execution of the conveyance. Execution of deed by attorney.

If, however, the power of attorney is created by an instrument executed after the 31 Dec., 1882, and is given for a valuable consideration, and in the instrument creating the power it is expressed to be irrevocable, it is provided by the Conveyancing Act, 1882, sec. 8, that such a power in favour of a purchaser (*r*) shall not be revoked at any time, either by anything done by the donor of the power, or by his death, marriage, lunacy, unsoundness of mind, or bankruptcy ; and, by section 9, it is provided that if a power of attorney created as aforesaid, whether given for a valuable consideration or not, is in the instrument creating the power expressed to be irrevocable for a fixed time not exceeding one year from the date of the instrument, then, in favour of a purchaser, the power shall not be revoked for that fixed period. It follows that whenever a deed is abstracted which was executed by an attorney under any such power, the production of the power is suffi- As to powers of attorney executed after 31st December, 1882.

(*q*) Bryant *v.* Busk, 4 Rus. 1.

(*r*) Who by the interpretation clause includes a mortgagee or lessee.

cient, as it will be immaterial whether the donor is living or not.

Title to leaseholds.

When the property is leasehold, the original lease and all the subsequent assignments should generally be abstracted; but if the property is held under a very ancient lease, it is sufficient to commence the abstract with the original lease (*s*), and then to take up the title at a period of forty years from the time of the purchase. It has been seen that, in the absence of stipulation, the purchaser is precluded by the new statutory rules from calling for the lessor's title.

When the estate has been specifically bequeathed, and the sale is made by the specific legatee, proof must be given of the assent of the executor to the bequest.

As to renewable leaseholds.

On the sale of renewable leaseholds, where the lease is expressed to have been granted in consideration of the surrender of a prior lease, the vendor must show the title to the surrendered lease (*t*), in the absence of any stipulation to the contrary.

As to satisfied terms.

As to *satisfied* terms, the document creating the term should be abstracted, together with the mesne assignments. If they have become merged under the provisions of the 8 & 9 Vict. c. 112, for rendering the assignment of satisfied terms unnecessary, the title to the term must be traced down to the period of such merger. If the term is of ancient date, it is sufficient to abstract the deed creating the term, and then to take up and trace the title to the term at the point at which the title to the inheritance is commenced. A valid objection to the title could not be raised, on account of the deed creating the term being lost, if it were of ancient date.

Copyholds.

As to copyholds, the abstract should contain a copy of the entries on the Court Rolls relating to the estate, accompanied by the necessary instruments, facts, and proofs, to show the equitable title; and the title is proved and verified by the production of copies of the Court Rolls. Where an owner dies seised, proof must be given that he did not leave a wife entitled to free-bench.

(*s*) Frend *v.* Buckley, L. R. 5 Q. B. 243.

(*t*) Hodgkinson *v.* Cooper, 9 Beav. 304.

When a conditional surrender has been made to a mortgagee, and he has not been admitted, it should be shown that satisfaction has been entered up.

On the purchase of copyholds, inquiry should be made as to the customs of the manor, especially as to descent, free-bench, fines, heriots, rents, &c.; and the purchaser should search the Court Rolls of the manor, in addition to the general searches which should be made for judgments, &c.

As to Crown lands and rectories impropriate.

In an abstract of title to lands granted by the Crown, or a rectory impropriate, the original grant must precede the deduction of the modern title, so as to show that it was a grant in fee, that no rent was reserved, and that there is no remainder or reversion in the Crown. The title from the original grantee to the commencement of the modern title need not be produced.

As to advowsons.

The title to advowsons must be traced for three entire incumbencies if the times of such incumbencies shall together amount to the full period of sixty years; but if the times of such incumbencies do not together amount to sixty years, then for such further time as with the times of such incumbencies will make up the full period of sixty years; and the purchaser must be furnished with a list of the presentations which have taken place within the required period. But no advowson can be recovered after the expiration of one hundred years, from the time at which a clerk has obtained possession of the benefice adversely, so that the title need never be carried back beyond one hundred years, although there may not have been three entire incumbencies within that time (*u*).

The new rules laid down in the second section of the Vendor and Purchaser Act, 1874, apply only to contracts for the sale of land. It would appear, therefore, that contracts for the sale of advowsons, which can hardly be brought within the term "land," are not governed by these rules.

As to life or reversionary interests.

On the sale of life or reversionary interests in trust moneys, the document containing the trust must be

(*u*) 3 & 4 Wm. 4, c. 27, secs. 30, 32.

abstracted, and all the clauses which relate to, or can in any respect affect, the property must be fully set out. If there are any other deeds which relate to the fund, they also must be abstracted, including any deeds by which new trustees have been appointed, &c., &c. ; and the purchaser will be entitled at his own expense to attested copies and a covenant for, or, under the new Act, an acknowledgment of his right to the production of such deeds and documents, in the absence of express stipulation to the contrary. The purchaser must ascertain the actual condition and position of the fund at the time of sale, and carefully examine the provisions of the document containing the trust, in order to be satisfied that there is no provision or power under which the *corpus* of the fund may be diminished or otherwise affected.

Evidence of Act.

When the title is derived under a private Act of Parliament a Queen's Printer's copy of the Act should be provided (*uu*), but if the vendor has no such copy in his possession the purchaser must pay for it (*v*).

As to allotment.

In purchasing an allotment, it should be ascertained that the allotment was authorised by the Act.

As to encroachments.

As to enclosures or encroachments made by a tenant, they will generally, as between him and his landlord, be the property of the latter, unless it can be proved that the tenant at the time intended the encroachment for his own benefit, and not to hold it as he held the estate of which he was tenant (*vv*).

Strips by a road.

As to open strips of land, which are next a public road, the legal presumption is that they belong to the owner of the adjoining enclosed land, and not to the lord of the manor (*w*).

As to life policies.

On the purchase of life policies, the purchaser, in the absence of a stipulation to the contrary, should be supplied with proof of the correctness of the statements on which the policy was granted, and that the last premium has been paid ; and if the policy was effected on the life of any other person than that of the assurer it will be

(*uu*) See 8 & 9 Vict. c. 113, sec. 3.
(*v*) Conveyancing Act, 1881, sec. 6.
(*vv*) Doe d. Mostyn *v.* Jones, 15 M. & W. 580 ; Andrews *v.* Hailes, 2 El. & Bl. 349 ; Doe d. Croft *v.* Tidbury, 14 C. B. 304, 325.
(*w*) Doe *v.* Pearsey, 7 B. & C. 304 ; Dendy *v.* Simpson, 18 C. B. 831.

necessary to ascertain that the assurer had at the time a pecuniary interest in the life of the assured.

Custody of abstract.

The purchaser is entitled to the custody of the abstract until either the purchase is finally rescinded by consent, or declared impracticable by the Court (*ww*); and if the sale proceeds, the abstract is the property of the vendee.

Succession duty.

Where land has devolved upon any person by the death of another since the 19th May, 1853, the purchaser should call for a receipt or certificate of the payment of the succession duty (*x*). And if the sale is made by a tenant for life and remainderman, the purchaser, unless precluded by an express stipulation, should require the succession duty, which will become payable on the death of the tenant for life, to be commuted, under section 41 of the Act, unless he is willing to accept an indemnity against such duty, or an abatement from his purchase-money in respect thereof.

Penalty for concealing deeds.

By a recent Act (*y*) it is enacted that any seller or mortgagor of land, or of any chattels real or personal, or choses in action, conveyed or assigned to a purchaser, or the solicitor or agent of any such seller or mortgagor, who shall after the passing of this Act conceal any settlement, deed, will, or other instrument material to the title, or any incumbrance, from the purchaser, or falsify any pedigree upon which the title does or may depend, in order to induce him to accept the title offered or produced to him, with intent in any of such cases to defraud, shall be guilty of a misdemeanour, and being found guilty shall be liable to the penalties mentioned in the Act. This Act is extended by the 23 & 24 Vict. c. 38, s. 8, to mortgagees as well as purchasers.

What enquiries vendor may refuse to answer.

Neither a vendor nor his solicitor can be required to answer an enquiry by the purchaser, whether the vendor or his solicitor is aware of any settlement, deed, fact, omission, or incumbrance affecting the property not disclosed by the abstract (*z*).

(*ww*) Roberts *v.* Wyatt, 2 Taunt. 268.

(*x*) 16 & 17 Vict. c. 51, secs. 51, 52.

(*y*) 22 & 23 Vict. c. 35, sec. 24.

(*z*) In *re* Ford and Hill, 10 Ch. D. 365.

II.—SEARCHES FOR INCUMBRANCES.

Provision in certain cases for registration.

It has been already stated that the abstract to be furnished by the vendor should mention all the documents and incumbrances affecting the property sold. But in some instances the legislature has provided for the enrolment and registration of documents and incumbrances, by means of which the purchaser can, independently of any abstract, discover what documents and charges actually affect the estate.

Middlesex Registry Act.

By the 7 Anne, c. 20, it is enacted that a memorial of all deeds and conveyances and of all wills and devises in writing, of or concerning or whereby any houses, manors, lands, tenements, or hereditaments in the county of Middlesex may be in any way affected in law or equity, may be registered as therein directed, and that every such deed and conveyance shall be adjudged fraudulent and void against any subsequent purchaser or mortgagee for valuable consideration unless such memorial thereof shall be registered as by the Act is directed before the registering of the memorial of the deed or conveyance under which such subsequent purchaser or mortgagee shall claim, and that every such devise by will shall be adjudged fraudulent and void against any subsequent purchaser or mortgagee unless a memorial of such will be registered in such manner as is therein directed. The 8th section then provides that all memorials of wills that shall be registered within six months after the death of devisors dying in Great Britain, or within three years after the death of devisors dying on the sea or beyond the seas, shall be valid against subsequent purchasers.

Yorkshire Registry Acts.

The 6 Anne, c. 35, ss. 1, 14, contains similar provisions as to deeds, conveyances, and wills relating to houses, manors, lands, tenements, and hereditaments situate in the East Riding and the town and county of the town of Kingston-upon-Hull. The 8 Geo. II., c. 6, ss. 1, 15, contains similar provisions as to deeds, conveyances, and wills relating to houses, manors, lands, tenements, and hereditaments situate in the North Riding; and the 2 & 3 Anne, c. 4, contains a similar provision as to deeds,

conveyances, and wills, relating to houses, manors, lands, tenements, and hereditaments situate in the West Riding; and by the 20th sect. of this Act it is declared that all memorials of wills that shall be registered within six months after the death of every devisor dying in England, Wales, and town of Berwick-upon-Tweed, or within three years after the death of every devisor dying upon or beyond the seas, shall be valid against subsequent purchasers.

"Vendor and Purchaser Act, 1874," sec. 8.

By the Vendor and Purchaser Act, 1874 (*a*), it is enacted that where the will of a testator devising land in Middlesex or Yorkshire has not been registered within the period allowed by law in that behalf, an assurance of such land to a purchaser or mortgagee by the devisee or by some person deriving title under him shall, if registered before, take precedence of and prevail over any assurance from the testator's heir-at-law.

What search should be made in the local Registry.

When the subject of purchase is land situate in a register county, a search for registered documents should be made in the local registry, over the whole period covered by the abstract (*b*); and it must be seen that all the documents requiring registration have been duly registered. If not, the vendor must, at his own expense, register them, but the purchaser must bear the expense of the registration of his own conveyance.

Effect of non-registration of a will within the six months.

If no will is registered within the six months allowed by the Acts, and the heir makes a conveyance for valuable consideration which is registered, and afterwards a will is discovered and registered, the conveyance by the heir prevails over the will. On the other hand, a registered conveyance by the devisee under an unregistered will prevails over a conveyance by the heir-at-law which is not registered until afterwards (*c*). It follows that on a purchase from the devisee under a will where the six months have expired without registration, the purchaser need not require registration, provided that he satisfies himself that there is no registered conveyance or mortgage by the heir (*d*).

(*a*) 37 & 38 Vict. c. 78, sec. 8.
(*b*) Dart, V. & P. 457.
(*c*) 37 & 38 Vict. c. 78, sec. 8.
(*d*) Chadwick *v.* Turner, L. R. 1 Ch. 310.

To what property Registry Acts do not extend.

The Registry Acts do not extend to copyholds, leases at a rack rent, or to any lease, not exceeding twenty-one years, where the actual possession and occupation go along with the lease, or to the city of London, or to any of the chambers in Serjeants' Inn, or to the Inns of Court or Chancery.

Appointment must be registered.

A deed of appointment under a power must be registered (*e*). The memorial of an assignment of leaseholds will not, by containing a recital of the lease, cure the omission to register the lease (*f*).

Assignment of legacy charged on land need not be registered.

An assignment of a legacy charged on land is an assignment of money only, so that such an assignment need not be registered (*g*).

Equitable mortgage.

An equitable mortgage by agreement, either with or without a deposit of deeds, requires registration (*h*), and so does a further charge in favour of a mortgagee who has registered his first mortgage (*i*).

It is always usual in practice—Lord St. Leonards remarks—to require a beneficial lease, not exceeding twenty-one years, to be registered where it is assigned by way of mortgage (*k*). But if a lease for twenty-one years, where the actual possession and occupation go along therewith, is assigned for a valuable consideration, such assignment continues strictly within the exception.

Purchasers with notice.

The object of the enactments being to secure subsequent purchasers and mortgagees against secret incumbrances, a purchaser who buys *with notice* of an unregistered deed, is bound in equity by such deed or will as completely as if it had been registered (*l*).

Registration of deed not notice.

On the other hand, the registration of a deed is not of itself notice. If, however, a man searches the register he will be deemed to have notice, unless he only searched for a particular period, in which case he will not be

(*e*) Scrafton *v.* Quincey, 2 Ves. sen. 413.

(*f*) Honeycomb *v.* Waldron, 2 Str. 1064.

(*g*) Malcolm *v.* Charlesworth, 1 Keen, 63.

(*h*) Moore *v.* Culverhouse, 27 Beav. 639.

(*i*) Credland *v.* Potter, L. R. 10 Ch. 8; Neve *v.* Pennell, 2 H. & M. 170; Wight's mortgage trust, L. R. 16 Eq. 41.

(*k*) Sug. V. & P. 581.

(*l*) Le Neve *v.* Le Neve, 3 Atk. 646, 655.

deemed to have notice of a deed registered before the commencement of such period (*m*).

Land registered under the Land Transfer Act, 1875, is exempt from registration in the local registers (*n*). Land registered under Act of 1875 exempt.

The subject of judgments affecting land in a register county is discussed below.

The usual searches upon completing a sale or mortgage, whether the property is situate in a register county or elsewhere, are searches in the central office of the Supreme Court of Judicature for judgments, crown debts, executions, extents, *lis pendens*, and annuities, and in the Land Registry Office for rentcharges, &c., under the Improvement of Land Act, 1864 (*o*). These will be considered in order. Usual searches.

I. *Judgments.*

Under the Statute of Westminster a moiety only of the debtor's lands could be extended by means of an elegit, and the term *lands* in this statute included all freehold estates held in severalty, coparcenary or in common (*p*), rent charges (*q*), lands held in ancient demesne (*r*), impropriate rectories and tithes (*s*), property in reversion expectant on a lease where the reversioner was entitled to a rent in respect of the lease (*t*), the lands of a bishop (*u*), &c.; but, under this statute, copyholds could not be extended (*v*), nor an advowson in gross (*w*), nor estates in joint tenancy after the death of the joint tenant, nor estates tail so as to affect the issue in tail (*x*). As to chattels real, under an elegit either a moiety might be extended as a part of the debtor's lands, or the entirety might be sold as part of his goods. A judgment was a general lien on all the freeholds of the debtor capable of being taken in execution from the date of its being entered up, but his chattels real were only Judgments. "Statute of Westminster."

(*m*) Sug. V. & P. 625; Hodgson *v.* Dean, 2 Sim. & Stu. 221.
(*n*) 38 & 39 Vict. c. 87, sec. 127.
(*o*) 27 & 28 Vict. c. 114. See also 33 & 34 Vict. c. 56.
(*p*) 2 Cru. Dig. 54.
(*q*) Moore, 32.
(*r*) 2 Inst. 397.
(*s*) Co. Lit. 159.
(*t*) 1 Roll. Abr. 894.
(*u*) 3 Bac. Abr. 383.
(*v*) 3 Co. 9.
(*w*) 3 Bac. Abr. 382.
(*x*) Ashburnham *v.* St. John, Cro. Jac. 85.

"Statute of Frauds."

bound from the time when the writ of execution was lodged with the sheriff. Under the 10th sect. of the "Statute of Frauds," execution could be sued out on judgments entered up against a *cestui que trust* of freeholds, provided they were vested in the trustee on a simple trust for the debtor, and provided the trustee was seised at the time of execution sued. But if a person purchased an equitable estate which was capable of being taken in execution, with notice of existing judgments against the debtor, no acquisition of the legal estate would protect him. This 10th section of the "Statute of Frauds" has been held not to extend to equities of redemption (*y*), or any other equitable estate in which the debtor had not the sole beneficial interest (*z*). Moreover, under the old law, the lien of all judgments entered up against the donee of a power subsequently to the creation thereof upon the estate, which might be limited to the donee in default of appointment, was defeated by an exercise of the power (*a*), and it was immaterial that the appointee had notice of the intermediate judgments (*b*.)

Statutes of the present reign.

During the present reign, several important statutes have been passed on the subject of Judgments. The first in order is the 1 & 2 Vict. c. 110.

1 & 2 Vict. c. 110.

The whole instead of a moiety of lands may be now taken under an elegit.

By sec. 11 of that statute, the sheriff is empowered to take in execution all the lands, tenements, rectories, tithes, rents, and hereditaments (including lands and hereditaments of copyhold or customary tenure) of which the debtor, or any person in trust for him, may be seised or possessed at the date of the judgment, or at any time afterwards, or over which he may have any disposing power which he might without the assent of any other person exercise for his own benefit, in like manner as the sheriff might then deliver execution of one moiety of the lands of any person against whom a writ of elegit was sued out. And by sec. 13, a judgment is made a *charge* in equity on all lands, tenements, rectories, advowsons, rents, and hereditaments (including lands and heredita-

Judgments an equitable charge.

(*y*) Burdon *v.* Kennedy, 3 Atk. 73.

(*z*) Harris *v.* Booker, 4 Bing. 96.

(*a*) Doe d. Wigan *v.* Jones, 10 B. & C. 459.

(*b*) Eaton *v.* Sanxter, 6 Sim. 517.

ments of copyhold or customary tenure) of or to which the debtor shall at the time of entering up such judgment, or at any time afterwards, be seised, possessed, or entitled for any estate or interest whatever, at law or in equity, or over which such debtor shall at the time of entering up such judgment, or at any time afterwards, have any disposing power, which he might, without the assent of any other person, exercise for his own benefit, and shall be binding as against the debtor and all persons claiming under him, and shall also be binding against the issue of his body, and all other persons whom he might, without the assent of any other person, debar from any remainder, reversion, or other interest; and there is a proviso that no judgment creditor shall be entitled to proceed in equity to obtain the benefit of his charge until the expiration of one year from the entering up of the judgment, and that the charge shall not give him any preference in bankruptcy unless the judgment was entered up one year at least before the bankruptcy of the debtor, and also that nothing contained in the Act shall affect any doctrine of courts of equity, whereby protection is given to purchasers for valuable consideration without notice.

Although under the 13th section the creditor cannot proceed in equity to obtain the benefit of the charge until the expiration of one year, the Court will, if necessary, interfere within that time for the purpose of impounding the rents (*c*).

Nature of right of judgment creditor.

The nature of the right or interest conferred upon judgment creditors by secs. 11 and 13 of the above Act is discussed in *Whitworth* v. *Gaugain* (*d*), where it was decided that a judgment creditor who had acquired the legal seisin and possession of land under an elegit, would not prevail against a prior equitable mortgage of which he had no notice. The Lord Chancellor observed, that where it was enacted that the judgment should operate as a charge upon the estate, this must mean a charge upon the beneficial interest of the debtor.

(*c*) Yescombe *v.* Landor, 28 Beav. 80; Partridge *v.* Foster, 12 W. R. 1127.

(*d*) 1 Phil. 728.

Effect of judgment against tenant in tail and donee of a power.

From the above sections it follows that a judgment against a tenant in tail is binding on his issue in tail, and also on the remainderman where there is no protector, and gives the creditor the benefit of a base-fee where there is a protector, and that a judgment against a donee of a power which he might alone exercise for his own benefit, operates as the execution of the power in favour of the creditor.

As against claimants under prior voluntary settlement.

The 13th section does not confer on the judgment creditor any right against a person claiming under a voluntary settlement previously made by the debtor (*e*); but a different law prevails in Ireland (*f*).

Judgment not a charge on ecclesiastical livings.

Charges on ecclesiastical livings being prohibited by previous statutes, a judgment has been held not to be a charge on this description of property (*g*).

Taking the person in execution.

The 16th section provides that if a judgment creditor takes the person of the debtor in execution, he loses the benefit of his charge under the Act.

On the construction of this section it has been decided that the seizure of the person of the debtor for a contempt of the Court of Chancery in not complying with a decree to pay a sum of money thereby ordered to be paid, is not a satisfaction of the debt within the meaning of the section (*h*).

Decrees, &c., to have effect of judgments.

By the 18th section all decrees and orders of Courts of equity, all rules of Courts of law, all orders of the Lord Chancellor or of the Court of Review in matters of bankruptcy, and all orders of the Lord Chancellor in matters of lunacy, whereby any sum of money, or any costs, charges, or expenses shall be payable to any person, are respectively put on the footing of judgments in the superior courts of common law (*i*).

Registration of judgments.

The 19th section provides "that no judgment, decree, order, or rule shall, *by virtue of that Act*, affect any lands, tenements, or hereditaments, as to purchasers,

(*e*) Beavan *v.* Earl of Oxford, 6 De G. M. & G. 507.

(*f*) 12 & 13 Vict. c. 95, sec. 6.

(*g*) Hawkins *v.* Gathercole, 6 De G. M. & G. 1; Bates *v.* Brothers, 2 Sm. & Gif. 509.

(*h*) Roberts *v.* Ball, 3 Sm. & Gif. 168. See Houlditch *v.* Collins, 5 Beav. 497.

(*i*) The orders of the Court of Probate are not within the above section, notwithstanding 20 & 21 Vict. c. 77, sec. 25. Pratt *v.* Bull, 1 New Rep. 47.

mortgagees, or creditors, unless and until a memorandum or minute, containing the name, and the usual or last known place of abode, and the title, trade, or profession of the person whose estate is intended to be affected thereby, and the court and the title of the cause or matter in which such judgment, decree, order, or rule shall have been obtained or made, and the date of such judgment, decree, order, or rule, and the account of the debt, damages, costs, or moneys thereby recovered or ordered to be paid, shall be left with the Senior Master of the Court of Common Pleas at Westminster."

The next Act relating to judgments is the 2 & 3 Vict. c. 11.

Provisions for re-registration.

The 4th section of that Act enacts, "that all judgments of the superior courts, decrees or orders in any court of equity, rules of a court of common law, and orders in bankruptcy or lunacy, which, since the passing of the Act of the 1 & 2 Vict. c. 110, have been registered under the provisions therein contained, or which shall hereafter be so registered, shall, after the expiration of five years from the date of the entry thereof, be null and void against lands, tenements, and other hereditaments, as to purchasers, mortgagees, or creditors, unless a like memorandum or minute as was required in the first instance is again left with the Senior Master of the said Court of Common Pleas within five years before the execution of the conveyance, settlement, mortgage, lease, or other deed or instrument vesting or transferring the legal or equitable right, title, estate, or interest in or to any such purchaser or mortgagee for valuable consideration, or as to creditors within five years before the right of such creditors accrued, and so, *toties quoties*, at the expiration of every succeeding five years; and the Senior Master shall forthwith re-enter the same in like manner as the same was originally entered; and such officer shall be entitled for any such re-entry to the sum of one shilling."

Purchasers without notice not affected by Act.

Sec. 5 provides that no judgment shall affect lands, &c., as against purchasers and mortgagees *without notice* further or otherwise, although duly registered, than a

judgment would have bound such purchaser or mortgagee before the 1 & 2 Vict. c. 110 (*j*).

Effect of omission to re-register in certain cases.

Upon the construction of the 4th section of 2 & 3 Vict. c. 11, it has been held that any purchaser, &c., who becomes such within five years from the registering of the judgment remains affected by it, though it is not subsequently re-registered (*k*); but if such purchaser sells again after the expiration of the five years the second purchaser is not affected, the object of the Act being to make a search for five years sufficient in all cases (*l*).

3 & 4 Vict. c. 82.

A question having arisen whether registry was essential to bind a purchaser with notice, it was provided by the 3 & 4 Vict. c. 82, sec. 2, "that no judgment, &c., should, *by virtue of the Act of the* 1 & 2 Vict. c. 110, affect any lands, &c., at law or in equity, as to purchasers, mortgagees, or creditors, unless the same was registered, any *notice* of any such judgment, &c., to any such purchaser, mortgagee, or creditor, in anywise notwithstanding."

It still, however, remained doubtful whether a purchaser, with notice of a judgment not registered, would be bound to the extent of the remedies under the "Statute of Westminster," but this defect in the previous statutes was remedied in the next-mentioned Act.

18 & 19 Vict. c. 15.

By the 18 & 19 Vict. c. 15, sec. 4, it is provided that no judgment, &c., which might be registered under the said Act of the 1 & 2 Vict., shall affect any lands, &c., as to purchasers, mortgagees, or creditors, unless and until such a memorandum or minute, as in the said Act in that behalf mentioned, shall have been left with the proper officer of the proper Court, any notice of any such judgment, &c., to any such purchaser, mortgagee, or creditor, in anywise notwithstanding. And by section 5 the provision contained in section 2 of the 3 & 4 Vict. c. 82, is extended not only to the 1 & 2 Vict. c. 110, but

(*j*) This section clearly shows that registration is not of itself notice; and it has been decided that the purchaser is not bound to search. Lane *v.* Jackson, 20 Beav. 535.

(*k*) Beavan *v.* Earl of Oxford, 6 De G. M. & G. 492.

(*l*) Benham *v.* Keene, 1 John. & Hem. 685—708.

also to the 4th section of the 2 & 3 Vict. c. 11, as explained by this Act (*i.e.*, the 18 & 19 Vict. c. 15), so that notice of any judgment, &c., not duly re-registered, shall not avail against purchasers, mortgagees, or creditors, as to lands, tenements, or hereditaments.

Provisions of former Act explained.

The 6th section, by way of explanation of the 4th section of the 2 & 3 Vict. c. 11, enacts that it shall be sufficient to bind purchasers, mortgagees, and creditors, if such a memorandum or minute as was required in the first instance is again left with the Senior Master of the Common Pleas within five years before the execution of the conveyance, settlement, mortgage, lease, or other deed or instrument vesting or transferring the legal or equitable right, title, estate, or interest, in or to any such purchaser or mortgagee for valuable consideration, or as to creditors within five years before the right of such creditors accrued, as directed by the said last-mentioned Act, although more than five years shall have expired by effluxion of time since the last previous registration before such last-mentioned memorandum or minute was left, and so, *toties quoties*, upon every re-registry.

Judgments against mortgagees.

Section 11 provides, that where any legal or equitable estate or interest, or any disposing power in or over any lands, &c., shall, under any conveyance or other instrument executed after the passing of the Act, become vested in any person as a purchaser or mortgagee, such lands, &c., shall not be taken in execution under any writ of elegit, or other writ of execution, to be sued upon any judgment, &c., against any mortgagee thereof who shall have been paid off prior to or at the time of the execution of such conveyance; nor shall any such judgment, &c., or the money thereby secured, be a charge upon such lands, &c., so vested in purchasers or mortgagees; and the remaining part of the section contains a similar provision as to crown debts.

23 & 24 Vict. c. 38.

No judgment to affect lands as to purchasers, &c., unless writ of execution is issued and registered.

By the 23 & 24 Vict. c. 38, sec. 1, it is provided that no judgment, statute, or recognisance to be entered up after the passing of the Act, shall affect any land (of whatever tenure) as to a *bonâ fide* purchaser for valuable consideration or a mortgagee (whether such purchaser or mortgagee has notice or not of any such judgment, &c.),

unless a writ or other due process of execution of such judgment, &c., shall have been issued and registered as thereinafter mentioned before the execution of the conveyance or mortgage to him, and the payment of the purchase or mortgage money by him, yet so that no such judgment, &c., nor any writ of execution, or other process thereon, shall affect any land as to a *bonâ fide* purchaser or mortgagee, although execution or other process shall have issued thereon, and have been duly registered, unless such execution or other process shall be executed and put in force within three calendar months from the time when it was registered. The 2nd section provides that the registry thereinbefore required of any writ of execution, or other due process on any judgment, &c., in order to bind a purchaser or mortgagee, shall be made by a memorandum or minute referring to the judgment, &c., already registered, so as to connect the registry of the writ of execution or other process therewith, such memorandum or minute to be left with the Senior Master of the Court of Common Pleas at Westminster, who shall forthwith enter the particulars in a book, in alphabetical order, by the name of the person in whose behalf the judgment, &c., upon which the writ of execution, or other process issued, was registered, and also the year and the day of the month when every such memorandum or minute shall be left with him.

Construction of Act.

It has been decided that an equity of redemption is within the above Act, although it is incapable of being taken in execution at law. A purchaser therefore of an equity of redemption was not affected by a judgment entered up between the 23rd of July, 1860, and the 29th of July, 1864 (the date of the passing of the next mentioned Act), whether he had notice of it or not, unless execution was issued and registered before the completion of the purchase (*m*).

27 & 28 Vict. c. 112.

No judgment to affect land until it is delivered in execution.

By the 27 & 28 Vict. c. 112, after reciting that it is desirable to assimilate the law affecting freehold, copyhold, and leasehold estates to that affecting purely personal estates in respect of future judgments, statutes, and

(*m*) Wallis *v.* Morris, 12 W. R. 997.

recognisances, it is provided that no judgment to be entered up after the passing of the Act (*viz.* the 29th of July, 1864) shall affect any land (of whatever tenure) until the same shall have been actually delivered in execution by virtue of a writ of elegit or other lawful authority in pursuance of such judgment. By the 2nd section the term "land" is interpreted as including all hereditaments corporeal or incorporeal, or any interest therein. The 3rd section declares that every writ or other process of execution of any such judgment, &c., by virtue whereof any hereditaments shall have been actually delivered in execution shall be registered in the manner provided by the 23rd and 24th Vict. c. 38, but in the name of the debtor instead of the creditor, and that no other or prior registration of such judgment, &c., shall be necessary for any purpose. The 4th section provides that every creditor to whom any hereditaments of his debtor shall have been actually delivered in execution by virtue of any such judgment, &c., and whose writ or other process of execution shall be duly registered, shall be entitled, while the registry of such writ, &c., shall continue in force, to obtain from the Court of Chancery upon petition in a summary way an order for the sale of his debtor's interest in such land. The 5th section provides that if it shall appear on making inquiries that any other debt due on any judgment, &c., is a charge on such land, the creditor entitled to the benefit of such charge (whether prior or subsequent to the charge of the petitioner) shall be served with notice of the order for sale, and shall after such order be bound thereby, and he is to be at liberty to attend the proceedings, and the proceeds of the sale are to be distributed among the persons who may be found entitled thereto according to their priorities. And the 6th section provides, that every person claiming any interest in such land through or under the debtor by any means *subsequently* to the delivery of such land in execution shall be bound by every such order of sale.

Construction of last-mentioned Act.

It has been decided that the last-mentioned Act applies to all interests in land, whether extendible at law or not, and that if the property consists of an equity of redemp-

tion or other equitable interest which cannot be delivered in execution by the sheriff, the appointment of a receiver by the Court is an equitable execution and equivalent to an elegit at law (*n*). In a case where a sheriff seized an estate in remainder, calling it a reversion, it was held that such seizure was void, estates in remainder not being extendible at law; and a petition under sect. 4 for a sale grounded on such seizure was dismissed (*o*); but it is apprehended that a judgment creditor may by an action (now substituted for a bill in Chancery) obtain a decree for sale of a remainder, and that such decree, if registered, would bind a subsequent purchaser.

Priority of judgment creditors as between each other.

As a judgment creditor has under the new Act no lien on his debtor's land until the return by the sheriff to the writ placed in his hands, which return is the delivery of execution, it follows that the priority of judgment creditors as between each other must be determined by the date at which the writs upon the respective judgments are placed in the hands of the sheriff, so that a subsequent judgment creditor placing his writ in the hands of the sheriff obtains a preference over the prior creditor whose writ is subsequently issued (*p*).

If a writ of elegit is issued and registered and the land delivered in execution thereunder after the debtor has contracted to sell, but before the purchase is completed, the creditor will of course take subject to the contract, but it is apprehended that he would be entitled to be paid out of the purchase-money, and that the purchaser could not safely pay the money to the vendor (*q*).

Result of above enactments.

The following propositions may be stated as the result of the above enactments:—

1. Judgment prior to 23rd July, 1860,

1. A purchaser will not be affected by any judgment entered up prior to the 23rd July, 1860, unless it has

(*n*) Hatton *v.* Heywood, L. R. 9 Ch. 229. See also Thornton *v.* Finch, 4 Giff. 575; *re* Cowbridge Railway, L. R. 5 Eq. 413; Guest *v.* Cowbridge Railway Co., *ib.* 6 Eq. 619; Becket *v.* Buckley, *ib.* 17 Eq. 435; Wells *v.* Kilpin, *ib.* 18 Eq. 298; Anglo-Italian Bank *v.* Davies, 9 Ch. D. 275; *Ex parte* Evans, 13 Ch. D. 252.

(*o*) *Re* South, L. R. 9 Ch. 369.

(*p*) Guest *v.* Cowbridge Railway Co., L. R. 6 Eq. 619.

(*q*) See Thornton *v.* Finch, 4 Giff. 505.

been registered or re-registered within five years prior to the date of the purchase, whether he has notice of such judgment or not.

must be registered, and re-registered within five years.

2. A purchaser will continue to be bound by a judgment entered up prior to the 23rd July, 1860, and duly registered or re-registered within five years prior to the date of his purchase, although it may not be subsequently re-registered; but, if he sells the land, the sub-purchaser will not be bound by the judgment, unless it is re-registered within five years prior to the date of the sub-purchase.

2. Registration of judgment prior to 23rd July, 1860, within five years sufficient without subsequent registration.

3. Although a judgment entered up prior to the 23rd July, 1860, has been duly registered and re-registered, a purchaser without notice of it is protected from all the extended remedies conferred by the Statutes of Victoria, and is only affected by such judgment to the same extent as he would have been affected under the old law. Thus, if the subject of the purchase be freeholds, only a moiety could be extended as against a purchaser without notice; if copyholds or an equity of redemption, no part could be taken; if leaseholds for years, the purchaser would be safe, if the sale was made before the writ was delivered to the sheriff; if the conveyance to the purchaser is made under the execution of a power, he would not be affected by any judgment entered up against the vendor subsequently to the creation of the power. But however good a holding title a purchaser might thus acquire, it would not be one which he could force on a purchaser from him, as it would be impossible to prove the fact that he had purchased without notice (*r*).

3. Purchasers without notice not affected by Statutes of Victoria.

But such purchaser would not have a marketable title.

4. A judgment entered up between the 23rd July, 1860 (the date of the passing of the 23 & 24 Vict. c. 38), and the 29th July, 1864, will not affect any purchaser, whether he has notice of it or not, unless it is duly registered or re-registered within five years prior to the completion of the purchase, and unless a writ or other process of execution shall have been issued and registered prior

4. Judgments between 1860 and 1864 must be registered and re-registered within five years, and execution must also be issued and registered.

(*r*) If a purchaser or his solicitor searches, it will be presumed that he searched effectually, and he will be affected by any judgment which he would have discovered, if the search had been properly made. Proctor *v.* Cooper, 18 Jur. 444; 2 Drew. 1.

to the completion of the purchase, and unless such execution or other process shall be put in force within three calendar months from its registry.

5. Judgment after 29th July, 1864, will not affect land until delivered in execution.

5. A judgment entered up after the 29th July, 1864, will not affect any purchaser of land where the vendor's interest is extendible at law, whether he has notice of it or not, unless the land is actually delivered in execution, *i.e.*, unless the sheriff has made his return to the writ placed in his hands, and the writ is duly registered under the 27 & 28 Vict. c. 112, sec. 3, previously to the completion of the purchase.

6. Equitable interests not affected by judgments subsequent to 29th July, 1864, until execution is registered.

6. A judgment entered up after the 29th July, 1864, will not affect any purchaser of an equity of redemption, an equitable interest in leaseholds, or other equitable interest in land not extendible at law, whether he has notice of it or not, unless an equitable execution has been obtained and registered.

7. What searches should be made.

7. A purchaser should search for judgments in the Central Office in the name of the vendor unless he is a trustee (*rr*), and such search should be made immediately before the completion of the purchase. The search for judgments should be brought up to the completion of the purchase, because although judgments entered up *after* the 29th July, 1864, need not be registered (*s*), judgments entered up *before* that time require to be re-registered, and, if so re-registered, will continue to bind the property. If upon such search a judgment is found, which was originally entered up before the 23rd July, 1860, its satisfaction or release should be required, although no execution may have been issued thereon; but if a judgment is found which was originally entered up between the 23rd July, 1860, and the 29th July, 1864, then a further search should be made in the name of the *creditor*, to ascertain whether any writ of execution thereon has been issued and registered. If no such registered writ of execution is found, or if one is found, but no action has been taken thereon for three months

(*rr*) All judgments, Crown debts, executions, extents, *lis pendens*, and annuities are now entered in the Central Office of the Supreme Court of Judicature.

(*s*) 27 & 28 Vict. c. 112, sec. 3.

from the registration, it may be disregarded. The purchaser should also search in the vendor's name for executions issued and registered against him since the 29th July, 1864, and should require the release or satisfaction of any judgment upon which he shall find a writ of execution to have been so issued and registered. If the vendor has acquired the property otherwise than by purchase for value, during the last twenty years, a similar search should be made in the name of every beneficial owner of the property as far back as and including the last purchaser for value within that period.

What search should be made if vendor was not purchaser for value.

Under the Local Registry Acts, a judgment does not affect lands as to purchasers, &c., unless it is registered. These Acts and the Act of 1 & 2 Vict. c. 110, are to be read together, and their joint effect is that a judgment must be registered both in the Central Office and in the Local Registry (*u*); but as the Local Registry Acts contain no provision similar to that in the Judgment Acts negativing the operation of the rule of equity as to notice, a purchaser who has notice of a judgment registered in the Central Office, but not in the Local Registry, is bound by it (*x*). On the other hand, judgments registered in the Local Registry, and not in the Central Office, do not affect purchasers and mortgagees whether with or without notice.

Judgments where land is in a register county.

It is to be observed, moreover, that as to lands situate in Yorkshire, certain periods are allowed by the local Acts to elapse between the entering up of the judgments and the registration—*i.e.*, as to lands in the North Riding *twenty* days, and in the East and West Ridings and in the town and county of the town of Kingston-upon-Hull *thirty* days (*y*); so that if a purchase is made after a judgment is entered up and registered in the Central Office, and subsequently to the purchase, and within the time allowed by the Registry Acts, such

(*u*) Westbrooke *v.* Blythe, 3 El. & Bl. 737; Hughes *v.* Lumley, *ib.* 274.

(*x*) Le Neve *v.* Le Neve, 3 Atk. 646—655; Davis *v.* Strathmore, 16 Ves. 419; Tunstall *v.* Trappes, 3 Sim. 307; Johnson *v.* Holdsworth, 1 Sim. N. S. 106; Benham *v.* Keene, 1 John. & Hem. 685.

(*y*) 8 Geo. 2, c. 6, sec. 1; 5 Anne, c. 18, secs. 4, 11; 6 Anne, c. 35, secs. 19, 28.

judgment is duly entered in the local Registry, the purchaser, though without notice of the judgment, will not be safe against it, at least so far as regards the remedies of the judgment creditor under the old law.

Proper search when land is in register county.

It is evident from what has been above stated, that where the subject of the purchase is land in a register county, a search in the Central Office for judgments is sufficient, but that, on the other hand, a purchaser cannot be advised to search in the local Registry *alone*, and to dispense with the usual five years' search in the Central Office. It is true that, if upon a sale by A. to B., B. searches the local Registry, he will not himself be affected by judgments not entered there, of which he has no notice, although as to lands in Middlesex he may make no search at all in the Central Office, and as to land in Yorkshire, though he may confine his search in the Central Office to the period allowed by the local Acts to elapse between the entering up of the judgment and the registration; yet, if he should afterwards sell the same land to C., and C. should search in the Central Office and find that within five years prior to the sale by A. to B. judgments were registered there against A., and have been since duly re-registered, it would be difficult for B. to prove his own want of notice to the satisfaction of C., and it might be questionable whether C. would be compelled to complete the purchase.

The local Acts do not provide for re-registration; consequently if a purchaser should search in the local Registry alone, he must carry back his search for twenty years.

When land is in register county, and judgment is entered up since recent enactments.

If the property is in a Register County, and the judgment has been entered up between the 23rd of July, 1860, and the 29th of July, 1864, or subsequently to the 29th of July, 1864, the above observations as to judgments so far as relates to property situate in a Register County must be taken in connection with the Acts of the 23 & 24 Vict. c. 38 and the 27 & 28 Vict. c. 112, the operation of which has already been discussed.

Effect of

Although not strictly within the scope of this Dis-

sertation, a few observations on the effect of the Judgment Acts in regard to creditors, as between themselves, will probably be found useful.

Judgment Acts as to creditors.

The Acts make registration and re-registration necessary in order to make a judgment entered up before the 29th July, 1864, binding upon lands as to creditors, as well as purchasers and mortgagees. Therefore as between two creditors obtaining their judgments before that date, their priorities depend on the order of their registration, and such a judgment creditor, having duly registered, must, in order to maintain his priority, take care to re-register every five years. But such a judgment creditor having duly registered, retains his priority as against subsequent judgment creditors becoming such within five years from the date of such registration, although he may not subsequently re-register (*z*).

Priority of judgment creditors depends on order of registration.

The doctrine of notice does not apply to judgment creditors as between themselves; consequently as to lands in a Register County, a creditor whose judgment is registered in the Central Office, and also in the local Registry, has priority over a judgment prior in date, registered in the Central Office, but not in the local Registry, although he may have notice of such prior judgment (*a*).

Doctrine of notice does not apply as between judgment creditors.

The Act 23 & 24 Vict. c. 38, sec. 1, makes execution necessary as to purchasers and mortgagees, but not as to creditors, so that as between two judgment creditors whose judgments were respectively entered up between the 23rd of July, 1860, and the 29th of July, 1864, the former is not obliged to sue out execution on his judgment in order to preserve his priority against the latter. But as regards judgments entered up subsequently to the 29th of July, 1864, the creditor who first places the writ in the sheriff's hands has the priority.

When execution need not be sued out to give priority against subsequent creditor.

Previously to the 23 & 24 Vict. c. 38, it was not necessary to register a judgment, in order to preserve its priority over the other debts of the deceased debtor, on

How far registration necessary to preserve priority of judgments

(*z*) Beavan *v.* Earl of Oxford, 6 De G. M. & G. 492.

(*a*) Hughes *v.* Lumley, 4 El. & Bl. 274; Benham *v.* Keene, 1 John. & Hem. 685. See also Neve *v.* Flood, 10 Jur. N. S. 667.

In the administration of debtor's estate. 23 & 24 Vict. c. 38, secs. 3 and 4.

an administration of his estate. Under sec. 3 of that Act, no judgment which has not been duly registered under the Judgment Acts, is to have any preference against heirs, executors, or administrators, in their administration of their ancestor's, testator's, or intestate's estates; and under sec. 4, no judgment which has been registered shall have any preference against heirs, executors, or administrators in their administration, &c., unless *at the death* of the testator or intestate five years shall not have elapsed from the date of the registry or last re-registry (*b*).

In administration of assets.

If, then, at the death of the debtor the judgment is not duly registered, in the administration of assets it must be paid out of his personal and real estate *pari passu* with his simple contract and specialty debts (*c*). If, however, the judgment is registered within five years before the death of the debtor, the debt will rank as follows:—as to the personal estate of the debtor the judgment as a debt of record must be paid before his simple contract and specialty debts; as to the debtor's real estate the priority of the judgment creditor, if his judgment was entered up after the 29th July, 1864, will depend upon whether he has actually taken the property in execution, for if not, it is apprehended that the judgment debt, and the simple contract and specialty debts, must be paid *pari passu* out of the real estate, such real estate in that case being only equitable assets for the payment of all the debts.

The 3rd section of the 23 & 24 Vict. c. 38, does not apply to a judgment entered up after the testator's or intestate's death against his executor or administrator. So that if a creditor after the debtor's death sues the executor and obtains judgment, he acquires, notwithstanding the Act, a priority over other creditors of equal degree who have not shown the same diligence, and as specialty and simple contract debts are now placed on the same footing (*d*), a judgment against an executor

(*b*) See Simpson *v.* Morley, 2 K. & J. 71.

(*c*) *Re* Turner, 33 L. J. Ch. 232; Van Gheluive *v.* Menicks, 21 Ch. D. 189.

(*d*) Stat. 32 & 33 Vict. c. 46.

for a simple contract debt gives to such debt in lirectly priority over specialty debts (*e*).

In *Simpson* v. *Morley* (*f*), it seems to have been considered that a decree for sale in an administration suit gives to the creditors of the deceased an interest in his land or an accruer of right within the meaning of sec. 4 of 2 & 3 Vict. c. 11, so that a judgment not registered or registered within five years before the date of such decree, loses its priority over the other debts. In order, therefore, to preserve the priority of a judgment to any extent in the administration of the assets of the deceased debtor, it must be registered, or re-registered within five years before his death, and should again be re-registered after his death at the expiration of five years from such registry or last re-registry in his lifetime (*g*). *Simpson v. Morley.*

II. *Crown Debts.*

A debt by simple contract to the Crown, as such, is no charge on the land of the debtor; but when it becomes in effect a debt of record, then, like all Crown debts upon record or by specialty, it becomes an immediate lien on all the debtor's freehold property, including equities of redemption and other equitable interests, rents, impropriate tithes, estates tail in the seisin of the issue in tail, but not after a *bonâ fide* alienation by the issue, &c. But copyholds are not extendible by Crown process, and chattels real are only bound from the *teste* of the extent. Crown debts upon record or by specialty,

Crown debts cannot be defeated by the execution of a power (*h*); but the Crown is bound by all interests actually created before the lien of the Crown has attached, and this would include an equitable mortgage by deposit of title deeds (*i*). cannot be defeated by execution of power.

(*e*) Jennings *v.* Rigby, 33 Beav. 198. *Re* Williams's estate, L. R. 15 Eq. 270.

(*f*) 2 K. & J. 71.

(*g*) As to judgments in Ireland, see 3 & 4 Vict. c. 105; 7 & 8 Vict. c. 90; 12 & 13 Vict. c. 95; 13 & 14 Vict. c. 29.

(*h*) Reg. *v.* Ellis, 19 L. J. (N. S.) Ex. 77.

(*i*) Casberd *v.* Attorney-General, 6 Price, 411.

Accountants.

An accountant to the Crown is a debtor by specialty to the Crown, so that any person who accepted office before the 5th July, 1865, could not dispose of any of the freehold lands which he may possess during the period of his accountantship without a certificate of discharge from the Commissioners of Her Majesty's Treasury (*j*).

Provisions for registration.

By the 8th section of the 2 & 3 Vict. c. 11, it is enacted that no judgment, &c., thereafter to be obtained or entered into in the name or upon account of her Majesty, or inquisition by which any debt should be found due to her Majesty, or obligation or specialty thereafter to be made, or any *acceptance of office* thereafter to be accepted by officers whose lands shall thereby become liable for the payment of arrearages under the Act of the 13 Eliz. c. 4, shall affect any lands, &c., as to purchasers or mortgagees, until a memorandum containing the particulars thereby provided is left with the Senior Master of the Court of Common Pleas, who shall forthwith enter the same particulars in a book to be intituled "The Index to Debtors and Accountants to the Crown."

Provision for re-registration of Crown debts as to purchasers, mortgagees, and creditors.

Prior to the 22 & 23 Vict. c. 35, it was not necessary to re-register Crown Debts; but by s. 22 of that Act, it was provided that from and after the 31st of December, 1859, the provision for the re-registry of judgments, &c., contained in the 2 & 3 Vict. c. 11, as explained and amended by the 18 & 19 Vict. c. 15, should extend to every such judgment, &c., as by section 8 of the 2 & 3 Vict. c. 11, was required to be registered, so that it should be obligatory on the Crown, in order to bind the lands, &c., of its debtors or accountants as against purchasers, mortgagees, or creditors becoming such after the 31st of December, 1859, to re-register, in like manner, as it was obligatory on a private person, and so that notice of any such judgment, &c., not duly re-registered should not avail against purchasers, mortgagees, or creditors becoming such after the 31st day of December, 1859, as to lands, &c., and that this provision should

(*j*) 13 Eliz. c. 4; 2 & 3 Vict. c. 11, sec. 10.

apply to every such judgment, &c., as since the passing of the 2 & 3 Vict. c. 11, had been registered under the provisions therein contained, or should thereafter be so registered.

Effect of notice as to Crown debts.

As to the question of notice, the 22 & 23 Vict. c. 35 provided that purchasers, &c., should not be bound by a Crown debt not duly re-registered, although they might have notice of the debt; but there is no provision in any former statute dispensing with the consequence of notice in the case of a purchaser or mortgagee from a Crown debtor becoming such within five years after the original registration of the Crown debt.

Original registration of Crown debts not made necessary as to creditors.

It will be observed that the 2 & 3 Vict. c. 11, sec. 4, made the registry of Crown debts necessary only as to purchasers and mortgagees, whilst the 22 & 23 Vict. c. 35, sec. 22, made the *re*-registry of Crown debts necessary as to *creditors* as well as purchasers and mortgagees; so that, according to the literal construction of the two Acts taken together, it was not necessary that Crown debts should be originally registered so as to preserve the lien of the Crown as against *creditors;* but if the Crown debt had been once registered, when the time had arrived for its re-registration, it must then be re-registered so as to be binding upon subsequent creditors. All that can be stated with certainty on this subject is, that if a Crown debt dated prior to the 5th July, 1865, has been once registered, but not duly re-registered, it will lose its priority with reference to all judgments of the Crown debtor which have been entered up subsequently to the period when the Crown debt ought to have been re-registered, and which are registered before the registry of the Crown debt, and that in every such case the fact of the judgment creditor having notice would be immaterial (*k*).

As to Crown debts since 28 & 29 Vict. c. 104.

As to Crown debts dated subsequently to the 5th July, 1865, however, it is enacted by the 28 & 29 Vict. c. 104, s. 48, that any judgment, &c., obtained after that date by or on behalf of the Crown, or any obligation or

(*k*) For further information on the subject of Judgments and Crown debts, the reader is referred to *Prideaux's Treatise on Judgments and Crown Debts, as they affect real property*, 4th ed.

specialty made after that date to the Crown, or any acceptance of office accepted after that date from or under the Crown, shall not affect any lands as to a *bonâ fide purchaser or mortgagee*, whether he have notice or not, unless a writ of extent or other process of execution thereon is issued and registered before the execution of the conveyance, &c., and the payment of the purchase or mortgage-money; and the 49th section prescribes the mode of registration of the writ or other process in the Common Pleas.

III. *Lis pendens.*

Lis pendens, what it is.

A person who purchases during the pendency of a suit relating to the subject of his purchase, is bound by the decree that may be made against the person through whom he derives title, whether he has notice of the pending proceedings or not (*l*); in other words, neither party to a litigation can alienate the property in dispute so as to affect his opponent. The doctrine of *lis pendens* is founded, not upon any peculiar principles of a Court of Equity as to implied or constructive notice, but is common to Courts both of Law and Equity, and rests upon this foundation, that it would be impossible that any action or suit could be brought to a successful termination if alienations *pendente lite* were permitted to prevail.

Suit must be pending.

With regard to the application of the doctrine, it should be borne in mind, first, that the suit must be *pending*, for there is no such doctrine as that a decree of a Court is to be deemed implied notice to a purchaser after the cause is ended (*m*); and, secondly, that the purchaser is only bound by rights ascertained in the suit affecting the estate itself which he purchases. Thus in *Worsley* v. *Earl of Scarborough* (*n*), it was held that where money is secured on an estate, and there is a question depending in the Court upon the right of or about that money, but no question relating to the estate whereon it is secured, a purchaser of the estate pending

Purchaser only bound by rights affecting the estate itself.

(*l*) Bishop of Winchester *v.* Payne, 11 Ves. 194, 197.

(*m*) 3 Atk. 391; Kinsman *v.* Kinsman, 1 R. & M. 617.

(*n*) 3 Atk. 391.

the suit without actual notice is not affected by the decree. Again, in *Bellamy* v. *Sabine* (*o*), a person took a mortgage from one of the defendants in a pending suit, and it was held that he was not affected by an equitable title of another defendant which appeared on the face of the proceedings, but of which such mortgagee had not notice, and to which it was not necessary for any of the purposes of the suit to give effect. Turner, L. J., in the course of his judgment, distinguished the case from one where the rights of the plaintiff might require that there should be an adjudication between the defendants.

The effect of administration suit.

Whilst an administration suit is pending, trustees under a testamentary power of sale cannot make a good title to real estate without leave of the Court (*p*); but an administration decree will not prevent an executor from selling or pledging the personal estate if no receiver has been appointed, or no injunction has been granted to prevent him from dealing with the assets (*pp*). In *Tyler* v. *Thomas* (*q*), which was a creditor's suit for the administration of a testator's estate, a decree was made for payment of the debts out of an estate devised to A., *without prejudice to his right to contribution out of an estate devised to B.*, and after such decree B. mortgaged to C. who had no notice of A.'s rights; it was held that the doctrine of *lis pendens* applied, and C. was postponed to A.

Notice of lis pendens.

Notice of a *lis pendens* is not an incumbrance. If therefore the claim in respect of which the suit is instituted is unsustainable, a purchaser cannot refuse to complete on account of the pending of the suit (*r*).

Lis pendens must be registered.

The 2 & 3 Vict. c. 11, sec. 7, provides that no *lis pendens* shall bind a purchaser or mortgagee, without express notice thereof (*s*), unless and until a memorandum or minute containing the name and the usual or last-known place of abode, and the title, trade, or profession

(*o*) 1 De G. & Jones, 584.
(*p*) Walker *v.* Smalwood, Amb. 676. Dart's V. & P. 60, 5th ed.
(*pp*) Berry *v.* Gibbons, L. R. 8 Ch. Ap. 747; Neeves *v.* Burrage, 14 Q. B. 504.
(*q*) 25 Beav. 47.
(*r*) Bull *v.* Hutchons, 9 Jur. 954.
(*s*) See Greaves *v.* Tofield, 14 Ch. D. 563.

of the person whose estate is intended to be affected thereby, and certain other particulars shall be left with the Senior Master of the Court of Common Pleas (*ss*), who shall enter the same in a book, in alphabetical order, by the name of the person whose estate is intended to be affected; and the provisions for re-entering judgments every five years are extended to *lis pendens*.

IV. *Annuities.*

Annuities and rent-charges must be registered.

By the 18 & 19 Vict. c. 15, sec. 12, it is provided that any annuity or rent-charge granted after the passing of the Act, otherwise than by marriage settlement, for one or more life or lives, or for any term of years, or greater estate determinable on a life or lives, shall not affect any lands, &c., as to purchasers, mortgagees, or creditors, unless and until a memorandum or minute containing the name and the usual or last-known place of abode, and the title, trade, or profession of the person whose estate is intended to be affected thereby, and the date of the deed, bond, instrument, or assurance whereby the annuity or rent-charge is granted, and the annual sum or sums to be paid shall be left with the Senior Master of the Court of Common Pleas at Westminster (*ss*), who shall forthwith enter the particulars in a book in alphabetical order, by the name of the person whose estate is to be affected by the annuity or rent-charge; but by the 14th sect. the provisions of the Act are not to extend to annuities or rent-charges given by will.

V. *Searches.*

What searches should be made.

It follows from what has been stated above, that the usual searches to be made by a purchaser are 1st, for judgments and *lis pendens*; 2nd, for Crown debts; 3rd, for executions and extents, &c.; and 4th, for annuities.

Where and how searches should be made.

Judgments, Crown debts, executions, extents, *lis pendens*, and annuities, are now entered in the Central Office

(*ss*) The search for *lis pendens* and annuities will now be made in the Central Office.

of the Supreme Court of Judicature; and section 2 of the Conveyancing Act, 1882, provides that the person requiring a search to be made for entries thereof, or of deeds or other matters whereof entries are required or allowed to be made under any Act (except deeds enrolled under any Act or statutory rule), may deliver in the office a requisition in that behalf referring to this section, whereupon the proper officer is to make the required search, and to file in the office a certificate setting forth the result; that office copies of the certificate shall be issued on requisition; and that an office copy shall be evidence of the certificate. The requisition must be in writing, signed by the person making the same, specifying the name against which the search is to be made, and other sufficient particulars; and the person making the requisition must satisfy the officer that the search is required for the purposes of the section. The advantages and protection of this section are then extended to trustees, executors, agents, and other persons in a fiduciary position, whether they obtain office copy certificate of result of the search through a solicitor or without one (*t*). Sub-section 7 provides that nothing in the section or any rule made thereunder shall affect any right which any person may have independently thereof to make any search in the office, and that every such search may be made as if the section or rule had not been enacted or made.

Rules made under sec. 2 of Conveyancing Act, 1882.

The Rules of December 1882 under the above section, and the forms of declarations as to purposes of search, requisitions for search and certificates of the results of search, will be found in the Appendix.

What will be the future practice as to searches and requisitions for search.

In future the practice will be as follows:—The purchaser will make a requisition for search according to the form No. VI. (*u*) annexed to the New Rules, in the name of the vendor unless he is a trustee, and if the vendor has acquired the property within the last twenty years otherwise than by purchase for value, then in the names also of such other persons as have been beneficial owners within that period as far back as the last pur-

(*t*) See sub-secs. 1, 2, 3, 4, 8, 9, 10.

(*u*) See *infra*, p. 819.

chaser for value. With respect to persons who have been owners of the property previously to the last purchase for value, it has hitherto been usual to assume that the proper searches against such persons were made on that occasion; but it is apprehended that in future if A., after the 31st December, 1882, has sold to B., and B. afterwards sells to C., C. will not only search against B., but will also require B. to produce the certificate of search obtained by him when he purchased, and in default of such production will himself search against A. also.

Searches in Bankruptcy Court.

If the circumstances of the vendor are such as to give ground for suspicion that he may have been made a bankrupt, a search for his name should be made in the Rolls of the Bankruptcy Court.

Solicitor should not omit to search.

A solicitor, for his own security, should have the usual searches made, unless he is authorised or directed in writing by his client not to do so; and if the title is laid before counsel, who advises that a *particular* search should be made—as, for instance, a search in order to ascertain whether the vendor has been made a bankrupt—the solicitor should make the search so directed.

Inquiry of tenants, and search in land registry office.

An inquiry should always be made of the tenant (if any) of the property, as to the nature and terms of his tenancy; and it may often be desirable to make a search in the Land Registry Office for rent-charges, &c., which may have been created under the powers of "The Improvement of Land Act, 1864" (*uu*).

Inquiries as to notice on sale or mortgage of chose in action.

Where the subject of sale or mortgage is a chose in action of any description, as, for instance, personalty vested in trustees, a debt, or policy of insurance, &c., inquiry should be made of the legal holder or holders as to what notice they have received of prior incumbrances, and also notice should be given to them of the purchase or mortgage as soon as the transaction is completed. The rule in such cases is, that of two purchasers or incumbrancers, the one who gives priority of notice is entitled to preference.

(*uu*) 27 & 28 Vict. c. 114; see also 33 & 34 Vict. c. 56; 38 & 39 Vict. c. 8, sec. 123.

III.—PURCHASE DEEDS.

In this Dissertation it is proposed to consider:—1. The mode of assurance of freehold estates. 2. The mode of assurance of copyhold estates, and other matters relating to copyholds. 3. The disabilities of certain persons in regard to the sale and purchase of land. 4. The form and ordinary parts of a deed of conveyance, and matters relating to the conveyance. 5. The arrangements to be made on a purchase in relation to the custody of the title deeds, attested copies, &c. 6. By whom the expenses of and incidental to the conveyance are to be borne. 7. The stamps on the conveyance. Division of the subject.

I. *The mode of assurance of freehold estates.*

A feoffment with livery of seisin was the ancient mode of conveying a freehold estate in possession in corporeal hereditaments, while incorporeal hereditaments, such as rents, advowsons, reversionary interests in freeholds, &c., being incapable of livery, were transferred by grant: hence the distinction between corporeal and incorporeal hereditaments, that the former were said to lie in livery, the latter in grant. Subsequently to the Statute of Uses, the same object as to corporeal hereditaments was effected by a bargain and sale by deed enrolled within six months, the bargain and sale in equity raising the use and the statute transferring the legal estate to the bargainee. But as the Act (*v*) which made enrolment of the deed necessary related only to estates of inheritance or freehold, chattel interests in land were not included in its operation. Accordingly, the mode of conveyance by lease and release was adopted, which at once got rid of both the inconvenient ceremonies of livery of seisin and enrolment. After the passing of the Statute of Uses, this mode of conveyance operated as follows: the lease Feoffment ancient mode of conveying freeholds. Lease and release.

(*v*) 27 Hen. 8, c. 16.

was a bargain and sale for a year made to the purchaser in consideration of a nominal sum, by which he became without entry legal tenant in possession for one year under the Statute. The purchaser being by this means put in possession of the property, only a reversion was left in the vendor. This reversion being a proper subject of release at common law, was by a deed dated the next day released to the purchaser.

Statutory release.

By the Act of the 4 & 5 Vict. c. 21, a release alone was made effectual for the conveyance of lands, provided the deed was expressed to be made in pursuance of that Act: and by the 8 & 9 Vict. c. 106, sec. 2, all corporeal hereditaments are made to lie in *grant* as well as livery, so that there is no further occasion to make the conveyance by a release grounded on a lease for a year, or to refer to the Act passed for dispensing with a lease for a year. Whilst, then, reversionary interests in freeholds pass by grant at common law, freehold hereditaments in possession will now pass by statutory grant. But it is not necessary to use the word "grant" in order to convey either corporeal or incorporeal hereditaments (*vv*).

Grant.

II. *The mode of assurance of copyhold estates, and other matters relating to copyholds.*

Mode of alienating copyholds.

The usual mode of alienating copyholds is by a surrender into the hands of the lord of the manor of which the lands are held, and the consequent admittance of the purchaser, by whom a fine is paid. The fine is either certain or arbitrary; but, if arbitrary, must be reasonable, which has been defined to mean, must not (except, perhaps, on the admittance of joint tenants), exceed two years' improved value of the land (*w*). These proceedings are formally entered on the Court Rolls, and a copy of the Court Rolls is delivered to the purchaser. The admission should be made in strict accordance with the terms of the surrender (*x*); and if there is any variation, the admittance will operate according to the surrender (*y*).

Form of admission.

(*vv*) Conveyancing Act, 1881, sect. 49.

(*w*) 1 Watk. Cop. 308; Scri. Cop. 317.

(*x*) Haward *v.* Raw, 6 H. & N. 308.

(*y*) Scri. Cop. 312.

Until the admission of the surrenderee, the surrenderor remains tenant to the lord, and the legal estate remains in him.

Surrender may be made in court or out of court.

The surrender may be made either in Court or out of Court. If made in Court it is entered on the Court Rolls, and a copy of the roll, so far as relates to the surrender, is made by the steward, stamped with the proper *ad valorem* duty, and delivered to the purchaser. If made out of Court, a written memorandum is made of the proceedings, signed by the parties and the steward; and the surrender, all presentments being now dispensed with, is forthwith entered on the Court Rolls (*z*).

Surrenderee cannot surrender until admittance.

A copyholder after a surrender by him cannot surrender to another (*a*); and a surrenderee cannot surrender until he himself has been admitted (*b*).

Purchase of copyholds by corporation.

Copyholds when purchased by a corporation which is empowered to hold land, should be surrendered to trustees for their benefit, and not to the corporation directly, as the lord would be justified in refusing admittance to a body who could not discharge the services, and the effect of which admittance would also be the loss of the fines consequent upon death (*c*).

Owner of legal estate real tenant.

If the legal estate in copyholds is vested in a trustee by admission, he is the tenant, and is consequently responsible to the lord for the performance of the feudal services, and the customary fines will be payable on his death and alienation, and not on the death or alienation of the equitable owner.

Admission of joint-tenants, &c.

Joint-tenants are but one tenant to the lord, and coparceners are but as one heir; so that the admission of one of many joint-tenants or coparceners is the admission of all. They are consequently admitted on the payment of one fine (*d*); and on such an admittance it would seem that in the absence of special custom the steward is only entitled to one fee (*e*). Joint-tenants or coparceners, when once admitted, can, without the payment of any additional fine, release their share to each other

(*z*) Wm. Real Prop. 358, 9th ed.; 4 & 5 Vict. c. 35, ss. 89, 90.
(*a*) Scri. Cop. 118.
(*b*) Scri. 117, 200.
(*c*) 1 Watk. Cop. 299.
(*d*) Scri. Cop. 347.
(*e*) Traherne *v.* Gardener, 5 El. & Bl. 913.

by deed of release. Where two out of three devisees in trust of copyholds released by deed their shares to the remaining trustee, the lord was held to be entitled only to a single fine on the admission of the remaining trustee, and the deed of release was held to operate as a disclaimer by the releasors of their right to be admitted (*f*).

Disclaimer by one trustee.

But if one of several trustees purports to disclaim after he has acted, the disclaimer is void, and the admission of one will be held the admission of all, and the fine must be paid accordingly (*g*).

Death of sole trustee after admittance.

In a case where a sole trustee died after admittance, and, his customary heir being out of the jurisdiction, a new trustee was appointed under the trustee Act, it was held that one fine only was payable on the admittance of the latter (*h*).

Tenants in common, &c.

Admission of representatives of tenants in common, &c.

Tenants in common, on the other hand, must be admitted severally, and a fine must be paid in respect of the share of each. On the death of tenants in common and coparceners, as there is no survivorship, their heirs and representatives must be admitted, and pay several fines for the shares to which they respectively may be admitted (*i*).

Admission of tenant for life generally admission of remainderman.

If a copyhold tenement is limited to A. for life or for a less interest with remainders over, the admission of A. is the admission of all in remainder, and one fine only is payable (*j*), unless there is a special custom to the contrary (*k*). It would appear that the lord may take the full fine from the tenant for life or may apportion it between him and the remainderman (*l*).

(*f*) Wellesley *v.* Withers, 4 El. & Bl. 750.

(*g*) Bence *v.* Gilpin, 3 Exch. 76.

(*h*) Bristowe *v.* Booth, 5 C. P. 80.

(*i*) Scri. Cop. 297 ; 1 Watk. Cop. 82.

(*j*) Brown's Case, 4 Co. 22 b.

(*k*) Doe d. Whitbread *v.* Jenning, 5 East, 522 ; Smith *v.* Glasscock, 27 L. J. C. P. 192.

(*l*) Scriv. Cop. 343 ; Blackburne *v.* Graves, 1 Mod. 120. In this case Lord Hale said : "I do not see any inconvenience whereby the admission of a tenant for life is not the admission of all in remainder, for fines are to be paid notwithstanding by the particular remainders ; and so the books say it shall not prejudice the lord. It shall not prejudice the lord, for if a fine be assessed for the whole estate, there is an end of the business ; but if a fine be assessed for the particular estate only, the lord ought to have another."

Where copyholds are limited to A. for life, with remainder as A. shall appoint.

Where a copyhold tenement is limited to A. for life, with remainder to such persons as A. shall appoint, it is apprehended that the appointee is in the same position as if he had been named in the will, so that the admission of A. enures to his benefit (*m*).

Executory devise.

Again, if a copyhold tenement is devised to A. in fee, subject to an executory devise over to B. upon an event which happens, the admission of A. enures to the benefit of B. (*n*).

Remainderman.

As the admission of the tenant for life is, in the absence of a special custom, the admission of the remainderman, it follows that the latter may during the continuance of the particular estate surrender (*o*). But if there is a special custom requiring a remainderman to be admitted, then if he applies for admission during the continuance of the particular estate, he must pay the fine immediately (*ii*).

If a remainderman dies and his heir surrenders, the lord cannot be compelled to accept the surrender, whether made in the lifetime of the tenant for life or afterwards, until the fine on the descent is paid (*kk*).

If the remainderman has devised his estate, the devisee must be admitted on the death of the tenant for life, and if he wishes to surrender in the lifetime of the tenant

(*m*) Lord Kensington *v.* Mansell, 13 Ves. 246. In Seaman *v.* Woods, 24 Beav. 372, a copyhold was devised to A. for life, and the executors were directed to sell after A.'s death, which they did, and bargained and sold the property to B., the purchaser. Romilly, M. R., was of opinion that the admission of A. was not the admission of B. It will be seen that the will contained no devise in remainder after the death of A., so that the copyhold descended to the heir-at-law, and the subsequent conveyance to B. operated not as a remainder, but as an executory devise displacing the heir's title by descent. If the will had devised the property after the death of A. to C., the question would have been different, and it is submitted that in that case the admission of A. would, in the absence of a special custom, have been the admission of C. and also of B. See Randfield *v.* Randfield, *infra*.

(*n*) This was so decided by Kindersley, V.-C., in Randfield *v.* Randfield, 1 Dr. & Sm. 310; and although the decision was reversed by the Court of Appeal, on the ground that there was a special custom requiring remaindermen to be admitted, Turner, L. J., expressed his concurrence in the opinion of the V.-C. on the general question.

(*o*) Gyppen *v.* Burney, Cro. Eliz. 504; Auncelme *v.* Auncelme, Cro. Jac. 31.

(*ii*) Evelyn *v.* Worsfold, 15 L. T. R. 4.

(*kk*) Reg. *v.* Lady of the Manor of Dullingham, 8 Ad. & Ell. 858.

for life, he must be admitted and pay the fine before he makes the surrender.

If a remainderman surrenders or devises his estate, and the surrenderee or devisee dies during the continuance of the particular estate, his heir can claim to be admitted on the payment of a single fine (*ll*).

When uses determine, copyholder is in of his old seisin.

If a copyholder surrenders to particular uses which determine, he is in of his old seisin, and need not be admitted again (*mm*). And if a copyholder devises to uses which do not exhaust the whole fee, the reversion descends to the heir (*nn*).

Trustees.

In a case where copyhold land was devised to trustees for a term of years, and subject thereto to A. in fee, and the lord admitted A. "according to the purport and effect of the will," who paid a full fine, it was held that the lord could not afterwards insist on the admittance of the trustees (*oo*).

Heir must be admitted, or lord may seize.

On the death of a tenant in possession intestate, the heir must come in and be admitted, or the lord may seize the lands into his hands *quousque* after proclamation has been made at three consecutive courts (*p*); and if the lord holds under such a seizure for twelve years, there being no disability, the heir's right to compel admittance is gone (*q*).

Admission on appointment of new trustees.

Where property is in settlement, and an admission takes place on the appointment of new trustees, the fine payable in respect of such admission must be borne by the particular estate and the estate in remainder, in proportion to the value of such estates respectively (*r*).

(*ll*) Garland *v.* Alston, 4 Jur. N. S. 539.

(*mm*) 9 Co. 107 a.

(*nn*) Bullen *v.* Grant, Cro. Eliz. 148. In Doe d. Winder *v.* Lawes, 7 Ad. & Ell. 195, it was held that if a copyhold is devised to A. for life, and the reversion descends on the heir, the admission of A. is the admission of the heir, and that there is no difference in this respect between a reversion and a remainder; but in another case the Court expressed a contrary opinion, and decided that the lord could not be compelled in such a case to accept a surrender by the heir until the descent fine was paid.

(*oo*) Everingham *v.* Ivatt, L. R. 7 Q. B. 683; 8 *ib.* 388.

(*p*) Scri. Cop. 226, 5th Ed. The 11 Geo. 4 & 1 Will. 4, c. 65, secs. 5—9, and 16 & 17 Vict. c. 70, secs. 108—111, contain provisions to meet the case of the heir, &c., being an infant, married woman, lunatic, or idiot.

(*q*) Walters *v.* Webb, L. R. 5 C. A. 531; 3 & 4 Wm. 4, c. 27, secs. 2, 3.

(*r*) Carter *v.* Sebright, 26 Beav. 374.

Where copyholds were devised to trustees for certain persons who sold the copyholds, and the purchaser was admitted on the surrender of the customary heir, the purchaser was held entitled to call for a release from the trustees of their bare right to be admitted (*s*). Release from trustees.

The Statute of Uses does not extend to copyholds, so that if a surrender is made to the use of A. in trust for B., A. is the person to be admitted, and B. has only an equitable estate. Statute of uses.

The Statute *De Donis* does not apply to copyholds, so that unless the custom of the manor authorises the creation of entails, all *legal* limitations of copyholds in the form of an estate tail would only be conditional fees. And a trust of copyholds can only be entailed where there is a custom to entail the legal estate (*t*). Statute *de donis*.

An equitable interest in copyholds may be assigned by deed (*u*), but it cannot be surrendered except for the purpose of barring an estate tail (*v*). Equitable interests.

Copyholds can only be leased by the copyholder for one year, or for any less period, without the licence of the lord, unless there is a custom in the manor enabling the tenant to lease for a longer period; and an actual lease without licence for any period not warranted by the custom of the manor would operate as a forfeiture. Such leases are, however, good and binding as between the parties, and also all other persons, except the lord who may enter for a forfeiture; but such right of entry may be waived or destroyed by any act on the part of the lord which amounts to an acknowledgment of the title of the copyholder, or by the lord not enforcing his right for twelve years (*x*). Leases of copyholds.

Copyholds may also be forfeited by the tenant's voluntary or permissive waste, such as pulling down houses, cutting down trees, digging for mines, failing to keep the property in good repair, or any other act or omission whereby the property should become deteriorated. A Forfeiture by waste, &c.

(*s*) Steele *v.* Waller, 28 Beav. 466. See Garland *v.* Mead, L. R. 6 Q. B. 441.

(*t*) Lewin's Trusts, p. 46.

(*u*) 1 Scri. Cop. 262; King *v.* Lord of Manor of Hendon, 2 Term Rep. 484.

(*v*) 3 & 4 Wm. 4, c. 74, sec. 50.

(*x*) See Scri. Cop. 5th ed., pp. 66, 326; 2 Watk. Cop., p. 30, note; 37 & 38 Vict. c. 57.

forfeiture may also be incurred by neglect to attend the customary court after being summoned, or by a refusal to pay the fine when certain or reasonable or the customary rent when demanded, or by the tenant wilfully withholding his services, &c. (*z*). Equity, however, will in certain cases relieve against a forfeiture (*a*), though not against a voluntary act, nor unless a compensation can be made to the lord (*b*).

Free bench.

The widow of a copyholder is not dowable except by custom. Customary dower is usually called free bench, and depends upon the custom of the particular manor. It is generally limited to the lands of which the husband *dies* seised, but sometimes it extends to all the lands of which he is seised at any time during the coverture. In most manors the widow's right to free bench is confined to one-third of the land, sometimes it extends to some other part, and sometimes to the whole. It is generally for the life of the widow, but sometimes during widowhood only (*c*).

No free-bench out of a trust.

A widow is not entitled to free bench out of a *trust* of copyholds (*d*), nor out of copyholds of which her husband is surrenderee, but dies before admittance (*e*). And free bench may generally be defeated by the alienation of the husband by an act *inter vivos*, or even by his contract for sale (*f*), or by the surrender of the husband, although the admittance of the surrenderee may not take place until after the husband's death (*g*).

Testamentary directions to sell, and scheme for saving double fine.

When a testator has in view an immediate conversion of his copyhold lands, it is usual, instead of devising them to trustees upon trust for sale, to direct or authorise the trustees to sell them, in order to save the necessity of a double admittance and a double fine, for, in the event of the property being sold under such a direction, the purchaser is entitled to be admitted on the payment of a single fine (*h*).

(*z*) Scri. Cop. 434, *et seq.*; 1 Watk. Cop. 398, *et seq.*

(*a*) See Andrews *v.* Hulse, 4 K. & J. 392.

(*b*) 1 Watk. Cop. 422.

(*c*) Scri. Cop. 72, 73.

(*d*) Scri. Cop. 75.

(*e*) Smith *v.* Adams, 5 De G. M. & G. 712.

(*f*) Scri. Cop. 74.

(*g*) Ibid. 90.

(*h*) Glass *v.* Richardson, 2 De G.

The lord, however limited his interest may be, can accept surrenders and make grants of copyholds held of the manor as fully as if he were seised of the manor in fee, and if, after having accepted a surrender his interest should determine before admittance, his successor would be compelled to admit the surrenderee (*i*). Power of lord with limited interest.

The tenure of copyholds may be changed, so as to alter their character entirely, by the lord's enfranchisement; but in order to make an absolute enfranchisement, except under the special powers conferred by the Copyhold Acts, the lord must have the whole freehold interest. The enfranchisement must be to the tenant; but it does not follow that the tenant must have the whole fee in himself, in order to accept an absolute enfranchisement. Although the copyholder may have only a partial interest in the premises, a conveyance to him by the lord of the whole fee simple would operate as an absolute enfranchisement, and would enure for the benefit of those in remainder as well as for that of himself (*k*). Enfranchisement of copyholds

Several Acts have been passed from time to time to facilitate the enfranchisement of copyhold property; which Acts are known by the short title of the Copyhold Acts. The Copyhold Act, 1841 (*l*), provides for voluntary enfranchisements. It constitutes Commissioners to be called "The Copyhold Commissioners" (*m*), and enables the lord of a manor, whatever may be his estate or interest therein, with the consent of the Commissioners, to enfranchise any lands, and any tenant, whatever may be his estate or interest, to accept such enfranchisement, subject to a provision requiring in the case of any party to an enfranchisement having less than an absolute interest the giving of certain notices to the other parties interested (*n*). The Act also contains provisions for charging the expenses of enfranchisements on the lands or manor (*o*), and as to the application of enfran- Enfranchisement of copyholds under Acts. Voluntary enfranchisements.

M. & G. 658. See also Reg. *v.* Wilson, 9 Jur. N. S. 439; Garland *v.* Mead, L. R. 6 Q. B. 441.

(*i*) Scri. Cop. 79. 5th edit.

(*k*) 1 Watk. Cop. 437, 438.

(*l*) 4 & 5 Vict. c. 35.

(*m*) Secs. 1 to 10.

(*n*) Sec. 52.

(*o*) Secs. 68 to 72.

chisement monies where the lord has a limited interest only (*p*).

Compulsory enfranchisements.

The Copyhold Acts, 1852 and 1858 (*q*), provide for *compulsory* enfranchisements.

The Act of 1852 makes it lawful for the tenant or lord after the next admittance on or after the 1st of July, 1853, to *compel* enfranchisement in manner thereinafter mentioned of the lands to which there shall have been such admittance: Provided that no such tenant shall be entitled to require such enfranchisement until after payment or tender of the fine or fines, and of the fees consequent on such admittance: Provided also, that if from any cause such enfranchisement shall not take place until some event shall have happened which may require a second or any subsequent admittance, such second or subsequent admittance shall be made with all the rights incident thereto as if this Act had not passed, and it shall be competent for the lord or tenant to require and compel enfranchisement upon or after such second or subsequent admittance in the manner thereby provided for enfranchisement on the next admittance (*r*); and the Act of 1858 extends the power to the case of copyhold lands where the last admittance shall have taken place before the 1st July, 1853: Provided that no tenant shall be entitled to require such enfranchisement until after payment or tender of such a fine, and of the value of such a heriot as would become due or payable in the event of admittance or death subsequent to the 1st July, 1853, and also of two-thirds of such a sum as the steward would have been entitled to for fees in respect of such admittance or heriot (*s*).

The second sec. of the Act of 1852 is repealed, and the Act of 1858 provides for the carrying out of enfranchisements, and ascertaining the sum to be paid as the consideration for enfranchisement, under the direction of the

(*p*) Secs. 73 to 76.

(*q*) 15 & 16 Vict. c. 51; 21 & 22 Vict. c. 94.

(*r*) Sec. 1.

(*s*) Sec. 6. The provisions of the Enfranchisement Acts requiring the payment of fines do not apply to railway companies purchasing under the Lands Clauses Consolidation Act (Wilson, *In re*, 2 John. & H. 619).

Copyhold Commissioners (*t*). The latter Act repeals the provisions in the former Act as to charging of enfranchisement monies and expenses on the land or manor, and contains new provisions for that purpose (*u*).

Expenses of enfranchisement.

The expenses of enfranchisement are to be borne by the party requiring it (*v*).

In enfranchisements under the Copyhold Acts, the commonable rights of the tenant are preserved (*x*).

Customary freeholds.

Customary freeholds are held according to the custom of the manor, but not at the will of the lord, and pass by surrender and admittance or by deed and admittance according to the custom, and in some manors they will pass by deed *or* surrender (*y*).

III. *The disabilities of certain persons in regard to the sale and purchase of land.*

Married women.

By the common law, husband and wife were regarded as one person (*z*), whence it followed that, with some exceptions which it is unnecessary to mention here, a married woman was under an absolute incapacity to do any act affecting property without her husband's concurrence ; and as the joint acts of husband and wife were *primâ facie* deemed to be the sole acts of the husband, and to be done by the wife under his control or compulsion, the common law did not permit a married woman to dispose of her lands, even with her husband's concurrence, otherwise than by fine, or matter of record, after being solely and secretly examined, in order to ascertain if her act was voluntary (*a*). The stat. 3 & 4 Will. 4, c. 74, abolishes fines, and substitutes for them a more simple mode of assurance.

3 & 4 W. 4, c. 74.

Power of disposition over lands.

Under that Act a married woman is enabled in every case, except that of being tenant in tail (for which pro-

(*t*) 21 & 22 Vict. c. 94, secs. 8 to 13 ; see also 15 & 16 Vict. c. 51, sec. 7.
(*u*) Secs. 21 to 37.
(*v*) Sec. 30 of Act of 1852.
(*x*) 4 & 5 Vict. c. 35, sec. 81 ; 15 & 16 Vict. c. 51, sec. 45.
(*y*) Scri. on Cop. 413, 5th edit. ; 1 Watk. on Cop. p. 58 note.
(*z*) Co. Lit. 112 ; 1 Bl. Com. 442.
(*a*) 1 Bl. Com. 444.

vision is otherwise made), by deed to dispose of lands of any tenure, and money subject to be invested in the purchase of lands, and to dispose of, release, surrender or extinguish any estate therein, which she alone, or she and her husband in her right, might have in any such lands or money, and to release and extinguish powers as if she were a *feme sole*, provided her husband concurs in the deed, and the deed is duly acknowledged. The Act does not apply to an estate at law in copyholds in those cases in which any of the objects to be effected by the above clause could, previously to the Act, have been effected by her, with the concurrence of the husband, by surrender (*b*). But with this exception, it extends to every kind of interest in corporeal or incorporeal hereditaments, including the proceeds of the sale of real estate directed to be sold whether the same be an interest in possession or reversionary (*d*), but not including a reversionary interest in a debt secured on mortgage of real estate (*dd*).

Acknowledgments, how to be made.

An acknowledgment under the above-mentioned Act must be made before a judge of the Supreme Court, or a County Court Judge (*e*), or before a perpetual Commissioner appointed by the Lord Chief Justice of England, or a special Commissioner appointed by the Court in those cases where, by reason of residence beyond seas, or ill health, or any other sufficient cause, she is prevented from making her acknowledgment in the ordinary way (*g*). The Judge or Commissioner before taking the acknowledgment must examine the woman separately from her husband to ascertain whether she freely and voluntarily consents thereto (*h*), and when the deed has been acknowledged, he must sign a memorandum, to be indorsed on or written at the foot or in the margin of the deed stating the acknowledgment and the separate examination (*i*).

(*b*) 3 & 4 Wm. 4, c. 74, sec. 77.

(*d*) Briggs *v.* Chamberlain, 11 Hare, 69; Tuer *v.* Turner, 20 Beav. 560; Williams *v.* Cooke, 4 Giff. 343; *In re* Durrant & Storer, 18 Ch. D. 106.

(*dd*) *In re* Newton's Trusts, W. N. 1882, 186.

(*e*) 19 & 20 Vict. c. 108, sec. 73.

(*g*) 3 & 4 Wm. 4, c. 74, secs. 79 to 83. By the Conveyancing Act, 1882, sec. 7, one perpetual or special commissioner is substituted for two.

(*h*) Sec. 80.

(*i*) Sec. 84. The latter part of this section, and the whole of secs. 85 to 88 inclusive, are repealed by the Conveyancing Act, 1882, so that

When the memorandum of acknowledgment purports to be signed by a person authorized to take the acknowledgment, the deed, as regards the execution by the married woman, takes effect at the time of acknowledgment, and will be conclusively deemed to have been duly acknowledged (*j*). Memorandum of acknowledgment

By the Conveyancing Act, 1882 (*k*), it is provided that an acknowledged deed shall not be impeachable by reason only that the judge or commissioner was interested or concerned either as a party, or as solicitor, or as clerk to the solicitor for one of the parties or otherwise in the transaction; and that General Rules should be made for preventing any person interested or concerned as aforesaid from taking an acknowledgment (*l*), but so that no such rule should make invalid any acknowledgment. Acknowledgment not impeachable because judge or commissioner is interested.

The Married Women's Property Act, 1882 (*ll*), which will be presently more particularly mentioned, renders acknowledgment unnecessary as regards property to which it applies, but in all other cases the provisions of the Act 3 & 4 W. 4, c. 74, above referred to, remain in force. Married Women's Property Act, 1882.

Where a married woman is seised *at law* of an estate in copyholds, not being property subject to the Married Women's Property Act, 1882, she and her husband must pass the estate by a surrender, on her being separately examined; but if the estate is equitable, the assurance can be either by surrender, or by a deed acknowledged by her as in the case of freeholds (*n*). As to copyholds of a married woman not subject to Act.

A power of appointment over land given to a woman, or to a woman who afterwards marries, can be exercised by her by an unacknowledged deed without the concurrence of her husband (*o*). Power to married woman, or who afterwards marries.

With regard to the chattels real of a married woman, not being property subject to the Married Women's Property Act, 1882, the husband may, without his wife's Chattels real of a married woman not subject to Act.

no certificate of acknowledgment in addition to the memorandum is now required. The form of the memorandum is prescribed by the new rules made in December 1882 under the Fines and Recoveries Abolition Act, and section 7 of the Conveyancing Act, 1882.

(*j*) Conveyancing Act, 1882, sec. 7.

(*k*) Sec. 7.

(*l*) See accordingly the first of the new rules referred to in note (*i*), pp. 184, 185.

(*ll*) 45 & 46 Vict. c. 75.

(*n*) 3 & 4 Wm. 4, c. 74, secs. 77, 90.

(*o*) 1 Sug. Pow. 182, 7th ed.

concurrence, dispose of them by act *inter vivos*, but not by will (*p*), but if he does not exercise such power they pass upon the death of either husband or wife to the survivor, and it is not necessary to take out administration (*q*). This power of the husband over his wife's chattels real extends to reversionary and contingent interests (*r*), unless the interest is of such a nature that it cannot by possibility vest in the wife in possession during the coverture (*s*). If the wife's interest in her chattels real is only equitable, she must concur in and acknowledge the deed of disposition in order to bar her equity to a settlement (*t*).

Separate use.

Equity has always recognised the separate existence of a married woman, and permitted her to deal with property limited to her separate use, as if she were a *feme sole*. Whenever, therefore, real or personal property stands limited to a trustee in trust for the separate use of a married woman, she may, in equity, dispose of her beneficial interest by deed unacknowledged, or by her will, without her husband's concurrence; and the trustee in whom the legal estate is vested is bound to convey it by her direction. And if the land has been so limited as to give to the wife the legal estate as well as the separate beneficial interest, it is apprehended that upon a sale by her, she will, after the receipt of the purchase-money, be a bare trustee for the purchaser within the meaning of the 6th section of the Vendor and Purchaser Act, 1874, and be able to convey the legal estate accordingly.

Married Women's Property Act, 1870.

The Married Women's Property Act, 1870, gave to a woman marrying after the 8th August, 1870, the right to hold for her separate use (besides certain kinds of personal property), the rents and profits of any freehold, copyhold, or customaryhold property descending upon her after marriage as heiress or coheiress of an intestate. This Act is repealed as from the 31st December, 1882, except as to rights acquired thereunder.

(*p*) Bracebridge *v.* Cook, Plowd. 417.

(*q*) A voluntary assignment or settlement by the husband of the wife's chattels real will prevail against the wife surviving (Doe *v.* Lewis, 11 Com. B. 1035).

(*r*) Donne *v.* Hart, 2 R. & M. 360.

(*s*) Duberley *v.* Day, 16 Beav. 33.

(*t*) Hanson *v.* Keating, 4 Hare, 1.

Provisions of Married Women's Property Act, 1882.

The legal disability of married women as regards property is now entirely removed by the Married Women's Property Act, 1882. By that Act it is provided that every woman who marries after the 31st of December, 1882, shall be entitled to have and to hold as her separate property, and to dispose of by will or otherwise in the same manner as if she were a *feme sole*, all real and personal property which shall belong to her at the time of marriage, or shall be acquired by or devolve upon her after marriage, including any wages, earnings, money, and property gained or acquired by her in any employment, trade, or occupation in which she is engaged, or which she carries on separately from her husband, or by the exercise of any literary, artistic, or scientific skill (*a*); and that every woman married before the 1st of January, 1883, shall be entitled to have and to hold, and to dispose of in manner aforesaid as her separate property, all real and personal property, her title to which, whether vested or contingent, and whether in possession, reversion, or remainder, shall accrue after the 31st of December, 1882, including any wages, earnings, money and property so gained or acquired by her as aforesaid (*b*)

Married woman's powers of disposition under Act.

It follows that as regards real property within the operation of the above Act, a married woman can dispose of it if freehold or leasehold, as well at law as in equity, by an unacknowledged deed without the concurrence of her husband, or by her will, and if copyhold by surrender or will, without her husband's concurrence or any separate examination. If she dies intestate and possessed of leaseholds within the operation of the Act, it is apprehended that they will not go to the husband by survivorship, but that he must perfect his title to them by taking out administration to her personal effects (*bb*).

Infants.

An infant under the age of twenty-one years cannot enter into a binding contract for the sale or purchase of an estate, and he cannot sustain a suit for the specific performance of such a contract during his infancy (*c*).

(*a*) Sec. 2.

(*b*) Sec. 5.

(*bb*) As to the husband's title to curtesy in his wife's freeholds of inheritance limited to her separate use or being her separate property under the Married Women's Property Act, 1882, see Vol. II., pp. 175, 176.

(*c*) Flight *v.* Bolland, 4 Russ. 298.

Such a contract is voidable by the infant, and on his attaining his majority, he may either avoid or affirm it as he thinks proper; and if he dies under age, his representatives have the like privilege (*d*). If, however, an infant contracts for the purchase of an estate, and pays a deposit, and afterwards, on his attaining twenty-one, refuses to complete the purchase, he cannot recover back the deposit, unless the vendor practised fraud in procuring its payment (*e*).

It may be stated, in general terms, that an infant would not be entitled to take advantage of his own fraud (*f*).

Lunatics.

Lunatics are incapacitated from disposing of their property, and their acts are absolutely void; but an executed contract, entered into *bonâ fide* and in the ordinary course of business, is not void by reason of one of the parties having been at the time of such contract of unsound mind, where such unsoundness is not known to the other party. Therefore where a lunatic purchased certain annuities for his life of a society which had at the time no knowledge of his unsoundness of mind, the transaction being fair and *bonâ fide* on the part of the society, it was held that after the death of the lunatic his personal representatives could not recover back the premiums paid for the annuities (*g*).

Trustees, &c.

Persons acting in a fiduciary character, such as trustees, agents, committees of lunatics, executors, the trustee of a bankrupt, &c., are unable to purchase the property which they are entrusted or empowered to sell, and the same rule would apply to a mortgagee with a power of sale, or to persons selling, not in virtue of their own beneficial estate, but under a discretionary power for the benefit of others; but this rule does not apply to a purchase by a mortgagee from a mortgagor, or by a mere *dry* trustee from his *cestui que*

(*d*) 4 Bac. Abr. 360; Clayton *v.* Ashdown, 9 Vin. Abr. 393, pl. 1; Dart, V. & P. 19.

(*e*) Sug. V. & P. 175; see also *Ex parte* Taylor, 8 De G. M. & G. 257. This is in accordance with the settled doctrine, that an infant who pays money without a valuable consideration, cannot recover it back again. (See Holmes *v.* Blogg 8 Taunt. 508.)

(*f*) 4 Bro. C. C. 507, n.; Overton *v.* Banister, 3 Hare, 503; Wright *v.* Snowe, 2 De Gex & Sm. 321; *In re* King, 3 De G. & J. 63; and see Nelson *v.* Stocker, 4 De G. & J. 458.

(*g*) Molton *v.* Camroux, 4 Exch. 17.

trust (*h*). Although a trustee cannot buy from himself, he may purchase from the *cestui que trust* if the relation of trustee and *cestui que trust* is previously dissolved, or, if not dissolved, by the parties agreeing to stand with reference to each other in the characters of purchaser and vendor (*i*).

Solicitors and others standing in a confidential relation.

If a parent purchases from his child, or a guardian from his ward who has only lately come of age, or a solicitor, or agent, or other person in a confidential relation from his client, the sale is not necessarily void ; but in all such cases the Court very jealously examines into the fairness of the transaction, and it rests with the purchaser to prove this, and that the consideration is adequate (*k*), and in a case, where the vendor's legal agent purchased, nominally for another, but really for himself, the mere concealment of the fact that he was the real purchaser, was held sufficient to vitiate the sale, even if fair in other respects (*kk*). But proceedings to set aside a sale on the ground of confidential relation between the parties ought to be instituted within a reasonable time (*l*). If the sale is set aside, the purchaser is of course entitled to have back his purchase-money, but in a case where the purchaser was a solicitor, it was held that he must prove its payment by further evidence than the acknowledgment in the deed and a memorandum endorsed upon it (*m*).

As to gifts to solicitors

A gift *inter vivos* from a client to his solicitor, made pending that relation, cannot be sustained (*n*), and the same rule applies to other confidential relations. But if the donor intentionally abides by the gift after the confi-

(*h*) Parkes *v.* White, 11 Ves. 226; Knight *v.* Majoribanks, 2 Mac. & Gor. 10.

(*i*) Gibson *v.* Jeyes, 6 Ves. 277 ; *Ex parte* Lacey, 6 Ves. 626 ; Montesquieu *v.* Sandys, 18 Ves. 302 ; Coles *v.* Trecothick, 9 Ves. 247 ; see also Harrison *v.* Guest, 6 De G. M. & G. 424 ; on appeal, 8 H. L. Cas. 481.

(*k*) Edwards *v.* Meyrick, 2 Hare, 63 ; Jones *v.* Thomas, 2 Y. & C. Exch. 498 ; Holman *v.* Loynes, 23 L. J. Ch. 529 ; King *v.* Savery, 1 Sm. & Giff. 271 ; Savery *v.* King, 5 H. L. Ca. 627 ; Gresley *v.* Mousley, 1 Giff. 450 ; Pearson *v.* Benson, 28 Beav. 598 ; Gibbs *v.* Daniel, 4 Giff. 1 ; Dalby *v.* Wonham, 33 Beav. 154.

(*kk*) Mc Pherson *v.* Wall, 3 App. Ca. 254.

(*l*) Marquis of Clanricarde *v.* Heming, 30 Beav. 175.

(*m*) Gresley *v.* Mousley, 3 De G. F. & J. 433.

(*n*) Hatch *v.* Hatch, 9 Ves. 292 ; Billage *v.* Southee, 9 Hare, 534 ;

dential relation has ended, it cannot be impeached after his death (*nn*). Nor does this rule apply to a gift *by will*, because it is the province of the Court of Probate to determine the question of fraud or undue influence as affecting any particular bequest, and if a will is once admitted to probate, a court of equity could only interfere by fixing a trust on the legacy in question, which it would not do merely because of the existence of the relation of solicitor and client (*o*).

Aliens.

Prior to the "Naturalization Act, 1870" (*p*), an alien might purchase, but on office found the land went to the Crown (*q*). And where lands were devised to a trustee for an alien, the trust was executed for the benefit of the Crown (*r*). But by the second section of the last-mentioned Act, it is provided that real and personal property of every description may be taken, acquired, held, and disposed of by an alien in the same manner in all respects as by a natural-born subject; and a title to real and personal property of every description may be derived through, from, or in succession to an alien in the same manner in all respects as through, from, or in succession to a natural-born British subject; but it is provided that this section shall not confer any right on an alien to hold real property situate out of the United Kingdom, and shall not qualify an alien for any office, or for any municipal, parliamentary, or other franchise, nor entitle him to any right or privilege as a British subject, except such rights and privileges in respect of property as are by the Act expressly given to him, nor affect any estate or interest in real or personal property to which any person has or may become entitled mediately or immediately, in possession or expectancy, in pursuance of any disposition made before the passing of the Act, or in pursuance of any devolution by law on the death of any person dying before the passing of the Act.

Capacity of an alien as to property.

Tomson *v.* Judge, 3 Drew. 306; Morgan *v.* Minett, 6 C. D. 638.

(*nn*) Mitchell *v.* Homfray, 8 Q. B. D. 587.

(*o*) Hindon *v.* Weatherill, 5 D. M. & G. 301. See also Walker *v.* Smith, 29 Beav. 394.

(*p*) 33 Vict. c. 14.

(*q*) Co. Litt. 2 b.

(*r*) Barrow *v.* Watkin, 24 Beav. 1, dissenting from V.-C. Stuart, who held otherwise in Rittson *v.* Sturdy, 3 Sm. & Giff. 230.

The 7th and 8th sections of this Act deal with the subject of applications for certificates of naturalization and re-admission to British nationality. The 10th section contains the following enactments with respect to the national status of women and children :—1. A married woman shall be deemed to be a subject of the State of which her husband is for the time being a subject. 2. A widow being a natural-born British subject, who has become an alien by or in consequence of her marriage, shall be deemed to be a statutory alien, and may, as such, at any time during widowhood, obtain a certificate of re-admission to British nationality in manner provided by the Act. 3. Where the father being a British subject, or the mother being a British subject and a widow, becomes an alien in pursuance of the Act, every child of such father or mother, who, during infancy, has become resident in the country where the father or mother is naturalized, and has, according to the laws of such country, become naturalized therein, shall be deemed to be a subject of the State of which his father or mother has become a subject, and not a British subject. 4. Where the father, or the mother being a widow, has obtained a certificate of re-admission to British nationality, every child of such father or mother, who, during infancy, has become resident in the British dominions with such father or mother, shall be deemed to have resumed the position of a British subject to all intents. 5. Where the father, or the mother being a widow, has obtained a certificate of naturalization in the United Kingdom, every child of such father or mother, who during infancy has become resident with such father or mother in any part of the United Kingdom, shall be deemed to be a naturalized British subject.

National status of married women and infant children.

Prior to the 33 & 34 Vict. c. 23, traitors and felons could *bonâ fide* sell chattels real and personal for the maintenance of themselves or families, or alien the same *bonâ fide* for value any time before their conviction (*s*); but a colourable alienation of goods by a person under charge of felony for the purpose of avoiding a forfeiture,

Traitors and felons.

(*s*) 8 Co. 171. See Mainpiece *v.* Reason, W. N. 1877, p. 161.

was fraudulent and void against the Crown (*t*). So also a voluntary settlement of personal estate after the commission of felony in favour of a wife and children was void against the Crown in the event of a conviction (*u*). As to lands of inheritance, however, the attainder both in respect of escheat and forfeiture had relation to the time of the offence committed, so as to avoid any conveyance or alienation of lands, although to a purchaser for value without notice, between the commission and the conviction (*v*). Where real estate was vested in trustees, and the *cestui que trust* committed felony, the trustees held the lands discharged from the trust (*x*); whilst the conviction of a person for treason or felony occasioned a forfeiture of his personal estate to the Crown, although it might be vested in trustees.

Forfeiture, &c., abolished.

The law, however, as to the property of traitors and felons has been materially altered by the 33 & 34 Vict. c. 23, which enacts that from and after the 4th July, 1870, no confession, verdict, inquest, conviction or judgment, of, or for any treason or felony, shall cause any attainder or corruption of blood, or any forfeiture or escheat (*y*). The 9th section provides for the appointment of an administrator of the convict's property; and by the 10th section it is provided that upon the appointment of the administrator under the last section all the real and personal property, including choses in action, to which the convict was at the time of his conviction, or shall afterwards, while he shall continue subject to the operation of the Act, become or be entitled, shall vest in such administrator for all the estate and interest of such convict therein.

Convict's property to vest in administrator on his appointment.

(*t*) 8 Co. 171; 3 Bac. Abr. 732; Perkins *v.* Bradley, 1 Hare, 219.

(*u*) *Re* Saunders' Estate, 4 Giff. 179.

(*v*) Co. Litt. 13 b.; 4 Jar. Con. by Sweet, 75; Tudor's R. Pro. 641.

(*x*) Burgess *v.* Wheate, 1 Eden, 117; Taylor *v.* Haygarth, 14 Sim. 8. Where real estate is vested in trustees, and the *cestui que trust* dies without heirs, the equitable estate does not escheat to the Crown, but the trustees will hold the lands discharged from the trust. (Burgess *v.* Wheate, *ubi suprà*.) So where real estate is subject to a legal mortgage in fee and the mortgagor dies without heirs, the equity of redemption does not escheat to the Crown, but, subject to its being assets in an administration suit for the payment of the mortgagor's debts, will belong to the mortgagee. (Beale *v.* Symonds, 16 Beav. 406.)

(*y*) Sec. 1.

The 12th section gives the administrator power to let, mortgage, sell, convey, and transfer any part of the convict's property; and the 13th and four following sections contain provisions enabling the administrator to make payments, compensations, and allowances out of such property. The 18th section then declares that, subject to the powers and provisions thereinbefore contained, all such property, and the income thereof, shall be preserved and held in trust by the administrator, and the income thereof may, if, and when the administrator shall think proper, be invested and accumulated in such securities as he shall from time to time think fit, for the use and benefit of the convict and his heirs or legal personal representatives, or of such other persons as may be lawfully entitled thereto according to the nature thereof, and the same, and the possession, administration, and management thereof, shall vest in and be restored to such convict upon his ceasing to be subject to the operation of the Act or in or to his heirs or legal personal representatives, or such other person as may be lawfully entitled thereto.

Power of administrator.

Property to be preserved for convict and to revert to him or his representatives on completion of sentence, pardon, or death.

The same Act provides for the appointment of interim curators by justices of the peace in cases where an administrator is not appointed (*z*).

Corporations are not allowed to hold land except by licence from the Crown, or under special statutory powers. By the Companies Act, 1862 (*a*), every company registered under that Act, may hold lands (*b*); but no company formed for the purpose of promoting art, science, religion, charity, or any other like object, not involving the acquisition of gain by the Company or the individual members thereof, can, without the sanction of the Board of Trade, hold more than two acres (*c*).

Corporations.

Conveyances of land for charitable purposes must generally be made by deed sealed and delivered in the presence of two witnesses, and enrolled in Chancery within six calendar months after its execution; and if the grantor dies within twelve calendar months after

Charity.

(*z*) See secs. 21—26.
(*a*) 25 & 26 Vict. c. 89.
(*b*) Sec. 18.
(*c*) Sec. 21.

the execution of the deed, the grant will be void unless it was made for valuable consideration (*d*). When the charitable uses are disclosed by a separate deed from the conveyance, such separate deed must be enrolled within six months after the execution of the deed of conveyance, and in that case the conveyance will be valid without inrolment (*e*).

IV.—*The form and ordinary parts of a deed of conveyance, and matters relating to the conveyance.*

Ordinary parts of a deed of conveyance.

The ordinary parts of a purchase deed are the names and descriptions of the parties, the recitals, the operative part (including the consideration and the habendum), and the covenants, if any are required.

Recitals.

The *recitals* in a purchase deed should be as few and simple as possible. If the vendor is seised in fee it is unnecessary to recite the conveyance to himself, but if the property was conveyed to him to uses to bar dower, it is usual to recite it. So also if the vendor is a trustee for sale, the instrument by which the trust is created should be recited, and it should also be shown by the recitals that the vendor has made the sale in accordance with the trust; but where the trust authorises a sale either by private contract or public auction, and the property has been sold by auction, the deed of con-

(*d*) 9 Geo. 2, c. 36. See also 24 Vict. c. 9; 27 Vict. c. 13, secs. 3, 4; 29 & 30 Vict. c. 57; see also the Dissertation on Wills in Vol. ii., *infrà*, as to testamentary dispositions to a charity.

(*e*) 24 Vict. c. 9, s. 2. Facilities have been provided by several statutes for the conveyance of sites for schools and literary and scientific institutions, and for purposes of recreation: see 4 & 5 Vict. c. 38; 7 & 8 Vict. c. 37; 12 & 13 Vict. c. 49; 13 & 14 Vict. c. 28; 14 & 15 Vict. c. 24; 15 & 16 Vict. c. 49; 17 & 18 Vict. c. 112; 22 Vict. c. 27. And the 31 & 32 Vict. c. 44, authorises dispositions, except by will, to a trustee or trustees on behalf of any society or body of persons associated together for religious purposes, or for the promotion of education, arts, literature, science, or other like purposes, of land for the erection thereon of a building for such purposes, freed from the provisions of the "Mortmain Act," provided the disposition is made for a valuable consideration as therein mentioned, and provided that the land does not exceed two acres in extent. See also 13 & 14 Vict. c. 28, which provides for the vesting of property devoted to religious or educational purposes in new trustees without any conveyance.

veyance need not refer to such auction, but may either recite generally that the vendor has agreed for the sale, or may contain no recital at all. The recitals (if any) which a purchase deed should contain must depend on the particular circumstances of each case, and it is sufficient to have given a few leading illustrations in exemplification of the general principle to be followed.

When there are incumbrances to be discharged.

Should the property be subject to incumbrances which are to be discharged, the purchase deed should explicitly recite the nature and extent of these charges, and the documents should be recited so far as to show the actual condition of the title at the date of the purchase; and it may be stated in general terms that no person should be made a party without its appearing for what purpose he joins in the deed.

Covenants for title by vendor who is beneficial owner.

A vendor who is beneficial owner is bound to covenant for title as to his own acts and the acts of all persons through whom he derives title otherwise than as purchaser for value, and if a person conveys and is expressed to convey as beneficial owner covenants for title by him in conveyances by deed executed after the 31st Dec., 1881, will be implied by virtue of the Conveyancing Act, 1881, sect. 7, which enacts that there shall be implied, instead thereof,

These covenants are now implied by vendor who conveys as beneficial owner.

On conveyance for value, by beneficial owner.

(A.) In a conveyance (*f*) for valuable consideration, other than a mortgage, the following covenant by a person who conveys and is expressed to convey as beneficial owner (namely):

Right to convey.

That, notwithstanding anything by the person who so conveys, or any one through whom he derives title, otherwise than by purchase for value, made, done, executed, or omitted, or knowingly suffered, the person who so conveys, has, with the concurrence of every

What "conveyance," "convey," and "property" include.

(*f*) The interpretation clause (sect. 2) provides that "conveyance," unless a contrary intention appears, shall include "assignment, appointment, lease, settlement, and other assurance, and covenant to surrender made by *deed* on a sale, mortgage, demise, or settlement of property or any other dealing with or for any property;" and "convey," unless a contrary intention appears, shall have a meaning corresponding with that of conveyance; and that "property," unless a contrary intention appears, shall include "real and personal property, and any estate or interest in any property real or personal, and any debt, and anything in action, and any other right or interest."

other person, if any, conveying by his direction, full power to convey the subject-matter expressed to be conveyed, subject as, if so expressed, and in the manner in which, it is expressed to be conveyed, and that, notwithstanding anything as aforesaid, that subject-matter shall remain to and be quietly entered upon, received, and held, occupied, enjoyed, and taken, by the person to whom the conveyance is expressed to be made, and any person deriving title under him, and the benefit thereof shall be received and taken accordingly, without any lawful interruption or disturbance by the person who so conveys or any person conveying by his direction, or rightfully claiming or to claim by, through, under, or in trust for the person who so conveys, or any person conveying by his direction, or by, through, or under any one not being a person claiming in respect of an estate or interest subject whereto the conveyance is expressly made, through whom the person who so conveys derives title, otherwise than by purchase for value; and that, freed and discharged from, or otherwise by the person who so conveys sufficiently indemnified against, all such estates, incumbrances, claims, and demands other than those subject to which the conveyance is expressly made, as either before or after the date of the conveyance have been or shall be made, occasioned, or suffered by that person or by any person conveying by his direction, or by any person rightfully claiming by, through, under, or in trust for the person who so conveys, or by, through, or under any person conveying by his direction, or by, through, or under any one through whom the person who so conveys derives title, otherwise than by purchase for value; and further, that the person who so conveys, and any person conveying by his direction, and every other person having or rightfully claiming any estate or interest in the subject-matter of conveyance, other than an estate or interest subject whereto the conveyance is expressly made, by, through, under, or in trust for the person who so conveys, or by, through, or under any person con-

Quiet enjoyment.

Freedom from incumbrance.

Further assurance.

veying by his direction, or by, through, or under any one through whom the person who so conveys derives title, otherwise than by purchase for value, will, from time to time, and at all times after the date of the conveyance, on the request and at the cost of any person to whom the conveyance is expressed to be made, or of any person deriving title under him, execute and do all such lawful assurances and things for further or more perfectly assuring the subject-matter of the conveyance to the person to whom the conveyance is made, and to those deriving title under him, subject as, if so expressed, and in the manner in which the conveyance is expressed to be made, as by him or them or any of them shall be reasonably required:

(in which covenant a purchase for value shall not be deemed to include a conveyance in consideration of marriage):

On conveyance of leaseholds for value, by beneficial owner.

(B.) In a conveyance of leasehold property for valuable consideration, other than a mortgage, the following further covenant by a person who conveys and is expressed to convey as beneficial owner (namely):

That, notwithstanding anything by the person who so conveys, or any one through whom he derives title otherwise than by purchase for value, made, done, executed, or omitted, or knowingly suffered, the lease or grant creating the term or estate for which the land is conveyed is, at the time of conveyance, a good, valid, and effectual lease or grant of the property conveyed, and is in full force, unforfeited, unsurrendered, and in nowise become void or voidable, and that, notwithstanding anything as aforesaid, all the rents reserved by, and all the covenants, conditions, and agreements contained in, the lease or grant, and on the part of the lessee or grantee and the persons deriving title under him to be paid, observed, and performed, have been paid, observed, and performed up to the time of conveyance:

(in which covenant a purchase for value shall not be deemed to include a conveyance in consideration of marriage).

Implied

The same section provides that the benefit of a cove-

covenants will be incident to the covenantee's estate, and may be varied or extended.

nant implied thereunder shall be annexed and incident to, and shall go with the estate or interest of the implied covenantee, and that such implied covenant may be varied or extended by deed, and, as so varied or extended, shall, as far as may be, operate as if such variations or extensions were directed in this section to be implied (*g*).

These covenants will be generally relied on.

The covenants for title set out in the Act are so comprehensive, that it is assumed that in future conveyances will very seldom contain express covenants for title.

Vendors who are not beneficial owners, only covenant against incumbrances.

A vendor who is not beneficial owner is not bound to enter into any other covenant than that he has done no act to incumber the property, and a covenant to this effect extending to his own acts only will be implied in conveyances executed after the 31st Dec. 1881, when the vendor conveys and is expressed to convey as trustee or mortgagee, or as personal representative of a deceased person or as committee of a lunatic so found by inquisition or under an order of the Court (*h*). The covenant to be implied is as follows, namely, "that the person so conveying has not executed or done or knowingly suffered or been party or privy to any deed or thing whereby or by means whereof the subject-matter of the conveyance or any part thereof is or may be impeached, charged, affected, or incumbered in title, estate, or otherwise, or whereby or by means whereof the person who so conveys is in anywise hindered from conveying the subject-matter of the conveyance or any part thereof in the manner in which it is expressed to be conveyed."

These covenants are now implied if vendor conveys as trustee, mortgagee, &c

Covenants on sale by trustees.

When, under a will, trustees are directed to sell for the payment of debts or for other purposes, and the purchase-money or the residue of the purchase-money (after discharging debts, or satisfying any other purposes for which the sale is to be made) is to be divided among persons who are *sui juris*, it used to be the practice of the profession to make the *cestuis que trust* parties, in order to covenant for title with reference to their respective interests (*k*); but this practice has not been adopted

(*g*) Sec. 7, sub-secs. 6, 7.
(*h*) Sec. 7, (F.)
(*k*) Dart, p. 507; Cottrell *v.* Cottrell, L. R. 2 Eq. 330.

by the Court in sales under its decree (*l*), and it is doubtful whether in any case where trustees are empowered to give receipts (and they have this power now by statute), a purchaser can insist on the concurrence of the beneficiaries in order to have their express or implied covenants for title (*m*). If it were held that the *cestuis que trust* who are *sui juris* must concur for this purpose, their refusal to do so might render it impossible for the trustees to perform the duty imposed upon them; and yet it seems to be clear that the purchaser has bought, with the estate, only the right to such covenants as can be obtained from the real vendors, who are the trustees and not the persons beneficially interested in the purchase-money (*n*).

Covenants by tenant for life.

Where a power of sale is exercised with the consent of the tenant for life, the purchaser is entitled to covenants for title from him (*o*); but Mr. Dart submits that although a tenant for life or other owner of a particular estate may be required to covenant in respect of his own beneficial interest, he cannot be required to covenant for title as respects the reversion beyond his own acts and the acts of persons claiming under him (*p*), and the practice has been in accordance with this opinion.

Covenants by husband on sale of wife's estate.

Provisions of recent Act.

On a sale by the husband and wife of the wife's estate, not being her separate property by statute or otherwise, the husband must covenant for title as if the estate were his own; and by the 7th section of the recent Act, sub-section 3, it is provided that "where a wife conveys, and is expressed to convey as beneficial owner, and the husband also conveys, and is expressed to convey, as beneficial owner, then within this section the wife shall be deemed to convey and to be expressed to convey by the direction of the husband as beneficial owner; and in addition to the covenant implied on the part of the wife, there shall also be implied first a covenant on the part of the husband as the person

(*l*) Sug. V. & P. 464.

(*m*) Dart, pp. 501, 507.

(*n*) 1 Dart, p. 501, 4th ed. It will be borne in mind, however, that if the beneficiary is a tenant for life or a person having the powers of a tenant for life under the Settled Land Act, 1882, his consent is now rendered necessary to the sale (sec. 56, sub-sec. 2.

(*o*) Sug. V. & P. 464. *In re* London Bridge Acts, 13 Sim. 176; Earl of Powlett *v.* Hood, L. R. 5 Eq. 115.

(*p*) Dart, 502.

giving that direction, and secondly a covenant on the part of the husband in the same terms as the covenant implied on the part of the wife."

Covenants for further assurance.

Under a covenant for further assurance, the purchaser cannot require a covenant for the production of title deeds (*q*).

Under the usual covenants for title the purchaser, in case of eviction, may recover the value of the land and also of houses which he had built thereon subsequently to his purchase (*r*).

When land is sold subject to restrictions.

Land is sometimes sold on condition that it shall not be built on, or used in a particular manner, or subject to other restrictions. A covenant to this effect, if entered into by a purchaser in fee-simple, would only be a covenant in gross, and would not, therefore, in a proper sense run with the land as to an assignee (*s*); but under such a covenant, *equity* would restrain the purchaser, and every purchaser from him buying *with notice*, from using the land for any purpose which would be a breach of the covenant (*t*); and he cannot protect himself on the ground of want of notice by not investigating the title when the proper investigation of it would have disclosed the restrictive covenant (*u*).

Restrictive covenants by purchaser.

Restrictive covenants entered into by a purchaser are generally intended to prevent the adjoining land retained by the vendor from being depreciated by the acts prohibited, and the question frequently arises whether a covenant of this kind can be enforced by a person who subsequently purchases the adjoining land or a part of it from the original vendor. On this point it may be considered as settled, (1) that in order to make the benefit of the covenant run with any particular land, the deed must define or sufficiently indicate what that land is (*v*); (2) that even where the land is so defined or indicated,

(*q*) Hallett *v.* Middleton, 1 Russ. 243.

(*r*) Binney *v.* Hopkinson, 27 Beav. 565.

(*s*) Keppell *v.* Bailey, 2 My. & K. 517.

(*t*) Mann *v.* Stephens, 15 Sim. 377; Tulk *v.* Moxhay, 2 Phil. 774; 11 Beav. 571; Coles *v.* Sims, 5 De Gex, M. & G. 1; Catt *v.* Double, L. R. 4 C. A. 654; Cooke *v.* Chilcott, 3 C. D. 694; Luker *v.* Dennis, 7 C. D. 227.

(*u*) Wilson *v.* Hart, L. R. 1 Ch. 463; Nicoll *v.* Fenning, 19 Ch. D. 258.

(*v*) Renals *v.* Cowlishaw, 9 C. D. 125; 11 C. D. 866.

if the original vendor afterwards sells and conveys it, without mentioning the covenant or informing the purchaser of it, the benefit of it will not pass (*w*); *à fortiori* this is the case, where a part only of the land retained is sold, because it is not to be supposed that a vendor intends to deprive himself of the right to deal as he thinks fit with the remainder of the estate, including the right to make an arrangement with the first purchaser by which the covenants may be put an end to or altered (*x*). (3.) But if there is a building scheme for the sale of an estate in lots according to some defined plan, and it is a part of the arrangement that all the purchasers shall enter into similar covenants for their mutual benefit, in such case the covenants will be mutually enforceable by and against all persons who come in as purchasers under the scheme (*y*).

In order to prevent all question it is desirable, where it is intended that covenants of this kind shall be enforceable not only by the vendor, but by all the purchasers, *inter se*, either to have a general deed containing such covenants executed by the vendor and by each purchaser as he completes (*z*), or to insert in the conveyance to each purchaser not only covenants by him with the vendor, but also a grant of the benefit of the similar covenants entered into by the other purchasers, and an agreement that as regards any lots not already sold and conveyed the same shall be subject to the like restrictions (*a*).

When covenants do and do not run with the land.

At law, covenants entered into by a grantee of land, for himself, his heirs, and assigns, only bound those who were in privity of estate with the covenantor. Thus, in *Roach* v. *Wadham* (*b*), lands were conveyed to A. to such uses as B. should appoint, and subject thereto, to B. in fee, in consideration of a fee-farm rent, which B.

(*w*) Master *v.* Hansard, 4 C. D. 718.

(*x*) Keats *v.* Lyon, 4 Ch. 218; and the observations in that case on Child *v.* Douglas, Kay, 560.

(*y*) Whatman *v.* Gibson, 9 Sim. 196; Coles *v.* Sims, Kay, 56; Western *v.* McDermot, 1 Eq. 499; 2 Ch. 72.

(*z*) Whatman *v.* Gibson, 9 Sim. 196.

(*a*) Coles *v.* Symes, Kay, 56; Western *v.* Macdermott, L. R. 1 Eq. 499; 2 Ch. 72; Eastwood *v.* Lever, 33 L. J. Ch. 355; Jay *v.* Richardson, 30 Beav. 563. See also Nicoll *v.* Fenning, 19 Ch. D. 258.

(*b*) 6 East, 289.

covenanted for himself, his heirs and assigns, to pay to the vendor. B. afterwards appointed the property to C. under the power; and it was held, that as C. claimed under the power, and not under the estate of B., he could not be sued on B.'s covenants. But if in the above case the conveyance to C. was made subject to the payment by him of the rentcharge, there can be no doubt that in equity he would be liable to pay it and to indemnify B. therefrom. So also, covenants will not run with the land if they are only collateral to the thing granted. Therefore a covenant to pay mortgage money, and on the purchase of land limited to the use that the vendor shall receive a yearly rent thereout, and subject thereto to the use of the purchaser in fee, a covenant by the purchaser to pay the rent, are only personal covenants (*c*). Covenants also must relate to the land itself in order to run, and if entered into with reference to other land they are only covenants in gross. Thus where a lessor covenanted with the lessee, his executors, administrators, and assigns, that he would give a right of pre-emption to the lessee, his executors, administrators, and assigns, in respect of a certain piece of adjoining land, the benefit of this covenant was held not to accrue to the assignee of the lease though named (*d*).

When purchaser must covenant with vendor.

Whenever the vendor sells property subject to certain liabilities, or covenants, for the observance of which he is personally liable, and it is a part of the arrangement that the purchaser shall take the land subject to the same restrictions, the purchaser must enter into a covenant with the vendor to abide by the same (*e*).

When purchaser must covenant fo production of deeds.

If on a sale of land, the vendor retains the deeds in respect of the unsold portion, and at the same time enters into an unqualified covenant for their production to the purchaser, and afterwards sells the remainder of the property, the second purchaser would be entitled to the deeds, but he may be required by the vendor to enter into a covenant with him to perform the covenant for

(*c*) Milnes *v.* Branch, 5 Man. & Sel. 411; Randall *v.* Rigby, 4 Mee. & Wel. 130.

(*d*) Collison *v.* Lettson, 6 Tau. 224.

(*e*) Moxhay *v.* Inderwick, 1 De G. & S. 708.

production (*f*). But if under the recent Act a vendor gives to a purchaser an acknowledgment of his right to production of deeds, such an acknowledgment binds the person giving it so long only as he has possession or control of the deeds, and consequently if he afterwards delivers them to a second purchaser, an undertaking from the latter to perform the obligation is unnecessary.

Effect of acknowledgment under recent Act.

Where land is conveyed to more than one person, in terms sufficient to make them joint tenants, the purchasers both at law and in equity take an estate in joint tenancy, if the purchase-money appears to have been advanced by them in equal proportions (*g*); but if this be not the case, and the purchase-money is paid in unequal shares, there would be a survivorship at law, but the purchasers *in equity* would be entitled to the land in the proportions in which the purchase-money was advanced by them respectively (*h*). And if one joint tenant lays out money in repairs or improvements, this would amount to a lien on the land (*i*); and he would also have a lien on the land for expenses which he might disburse for the renewal of leaseholds (*k*).

Conveyance to joint tenants.

Effect where purchasers advance the purchase-money in different proportions.

So where a conveyance is made to two partners as joint tenants for partnership purposes, the survivor would hold the estate, as to the share of the deceased partner, as a trustee for his representatives (*l*). And the same principle would apply to the case of a purchase by two or more persons for the purpose of a joint adventure or speculation (*m*).

Conveyance for partnership purposes.

If real estate is purchased for partnership purposes the most convenient plan is to take the conveyance to the partners as tenants in common in shares corresponding with their shares in the partnership property, but without mentioning that it is for partnership purposes. If, however, there are a great many partners, it may be desirable

Purchase by partners.

(*f*) Dart, 362.
(*g*) Aveling *v.* Knipe, 19 Ves. 441.
(*h*) 2 Ves. Sen. 258.
(*i*) Lake *v.* Gibson, 1 Eq. Ca. Abr. 290, pl. 3.
(*k*) Hamilton *v.* Denny, 1 Ball & Bea. 199.
(*l*) Morris *v.* Barrett, 3 Y. & J. 384.
(*m*) Lake *v.* Craddock, 3 P. Wms. 158; Morris *v.* Barrett, 3 Y. & J. 384.

to vest the property in some of them, with a separate declaration of trust.

Purchase in the name of a third person.

If a purchase of real or personal estate is taken in the name of a person or persons other than and different from the person who actually paid the purchase-money, there is generally an implied trust in favour of the person who actually paid the money, and parol evidence of such being the case will be received in the Court, although it may appear by the purchase deed that the money was advanced by the nominal purchaser (*n*). At the same time the presumption in favour of an implied trust may be rebutted by other circumstances brought before the Court in evidence (*o*).

Exceptions to rule.

There are, however, exceptions to the rule above stated, as where the purchase is taken in the name of a wife (*p*), child (*q*), or several children (*r*), grandchild where the father is dead (*s*), an illegitimate child if there has been a recognition or filial treatment of the purchaser towards him (*t*), and persons towards whom the purchaser has placed himself *in loco parentis* (*u*). In such cases the purchase is regarded as an advancement, unless satisfactory evidence is produced to negative the presumption that the purchase was intended to operate as such (*v*). A purchase or investment however of real or personal estate by a mother in the name of her child, or in the joint names of herself and her child, does not generally raise the presumption that an advancement was intended (*w*).

Purchase in the name of purchaser and a third person.

So, also, if a person purchases land or stock in the joint names of himself and his wife, or in the joint names of himself and his child, grandchild where the

(*n*) Cripps *v.* Jee, 4 B. C. C. 478.

(*o*) Rider *v.* Kidder, 10 Ves. 360; Beecher *v.* Major, 2 Drew. & Sm. 431.

(*p*) Glaister *v.* Hewer, 8 Ves. 199; see also Drew *v.* Martin, 10 Jur. 356.

(*q*) Mumma *v.* Mumma, 2 Vern. 19; Dyer *v.* Dyer, 2 Cox, 92; W. N. 1877, 184; Hepworth *v.* Hepworth, L. R. 11 Eq. 10.

(*r*) Finch *v.* Finch, 15 Ves. 43.

(*s*) Ebrand *v.* Dancer, 2 Cha. Ca. 26.

(*t*) Kilpin *v.* Kilpin, 1 M. & K. 542. But see Tucker *v.* Barrow, 2 Hem. & Mil. 515.

(*u*) Ebrand *v.* Dancer, 2 Cha. Ca. 26; Currant *v.* Jago, 1 Coll. 261.

(*v*) Rider *v.* Kidder, 10 Ves. 36; Dart, 489; Scawin *v.* Scawin, 1 Y. & C. C. C. 65.

(*w*) Bennet *v.* Bennet, 10 Ch. D. 474.

father is dead, or any other person towards whom the purchaser has placed himself *in loco parentis*, the purchase will be regarded as an advancement in the absence of evidence sufficient to rebut the presumption that the purchase was intended as such, and in the event of the purchaser dying first, the survivor will be entitled to take the whole (*x*). An investment made in the names of a wife or child and a stranger is in fact an advancement for the wife or child, and the stranger would hold as trustee for the person entitled to the advancement (*y*).

Satisfied terms.

It was formerly the practice on a purchase, when it appeared that the property was subject to a term of years created for purposes which had become satisfied, to keep the term alive by assigning it to a trustee for the purchaser to attend the inheritance and protect it from mesne incumbrances. This practice was put an end to by the Act 8 & 9 Vict. c. 112, which in effect enacts that (with an exception intended to protect existing interests) all terms of years which by express declaration or construction of law should on the 31st day of December, 1845, be attendant on the inheritance, or which becoming satisfied after that date should either by express declaration, or by construction of law, become attendant on the inheritance, should absolutely cease and determine. The Act extends to freeholds and such customary lands as will pass by deed, or deed and admittance, and not by surrender (*z*).

Act for dispensing with their assignment.

Purchaser should ascertain that term is satisfied.

It must be borne in mind, however, that the term will not cease under the Act, unless the term is *satisfied*, and it will not be held to be satisfied so long as there remains any useful purpose beneficial to

(*x*) Dormer *v.* Pitcher, 2 My. & K. 262; Low *v.* Carter, 1 Beav. 426; Vance *v.* Vance, 1 Beav. 605; Fowkes *v.* Pascoe, L. R. 10 Ch. 343; Sayer *v.* Hughes, L. R. 5 Eq. 376; Batson *v.* Salter, L. R. 10 Ch. 431; W. N. 1877, p. 184. As to purchases made by a married woman out of her separate estate, in the name of her child, or a person to whom she had placed herself *in loco parentis*, see Re De Vesme, 2 De G. J. & Sm. 17; Beecher *v.* Major, 2 Drew. & Sm. 431.

(*y*) *In re* Eykyn's Trusts, 6 Ch. D. 115.

(*z*) See sec. 3.

the owner of the term, and consistent with the trusts on which the term is directed to be held. Thus, where (*a*) a mortgage for a term was paid off by a person who believed himself to be owner of the fee but who afterwards was proved not to be such by reason of the existence of a deed executed after the creation of the term, and unknown to him, it was held that the payment having been made by him under a mistake, the term was not satisfied; and in another case (*b*) where a term created by way of mortgage had become vested by transfer in a trustee for the mortgagee, and the mortgagor conveyed the fee to the mortgagee in consideration of a release of the debt, but the wife of the mortgagor, although made a party, did not execute the deed, it was held that the term remained on foot as a protection against the wife's dower. So, if by a settlement the term is created for the purpose of raising portions, and the tenant for life of the settled estate pays off the charge, the term does not by such payment become satisfied for the benefit of the inheritance (*c*). Where a term would not merge in the inheritance if united in the same person, it will not be attendant when vested in a trustee.

When incumbrances should be kept on foot.

If at the date of the purchase there are mortgages on the estate which are to be discharged, and there is ground for suspecting the existence of mesne incumbrances, it may be desirable to keep alive those charges and to assign them, with the securities, to a trustee for the purchaser's protection (*d*).

Execution of conveyance, and receipt for purchase-money.

Whether a purchaser can insist on the vendor executing the deed in the presence of his (the purchaser's) solicitor was, until the recent Act, frequently made a question (*e*). It is now enacted that a purchaser shall not be entitled to require that the conveyance be executed in his presence or in that of his solicitor as such, but that he may at his own cost have its execution

(*a*) Doe d. Clay *v.* Jones, 13 Q. B. 774; 18 L. J. Q. B. 260. See, also, Shaw *v.* Johnson, 1 Drew. & Sm. 412.

(*b*) Anderson *v.* Pignott, L. R. 8 Ch. 180.

(*c*) Hill's Trustees, 318.

(*d*) Parry *v.* Wright, 1 Sim. & Stu. 369.

(*e*) Viney *v.* Chaplin, 2 De G. & J. 468; Essex *v.* Daniell, L. R. 10 C. P. 538.

attested by some person appointed by him, who may, if he thinks fit, be his own solicitor (*f*). It is also provided as to cases where the consideration is to be paid or given after the commencement of the Act, that where a solicitor produces a deed having in the body or indorsed thereon a receipt for consideration money or other consideration, the deed being executed or the indorsed receipt being signed by the person entitled to give a receipt for that consideration, the deed shall be sufficient authority to the person liable to pay or give the same for his paying or giving the same to the solicitor without the solicitor producing any separate or other direction or authority in that behalf from the person who executed or signed the deed or receipt (*ff*).

If the property is sold by auction the auctioneer is entitled to receive the deposit, but without special authority he cannot give a discharge for the remainder of the purchase-money (*g*).

V. *The arrangements to be made on a purchase in relation to the custody of the title deeds, attested copies, &c.*

Title deeds relating solely to the property sold, to be delivered to the purchaser.

All the deeds in the possession of the vendor relating to the property sold, and to no other property, must be delivered to the purchaser on the completion of the purchase, however ancient such deeds may be (*h*).

Rule where deeds relate to other property also.

If property held under one title is sold in lots and there is no stipulation as to the custody of the deeds, the practice is for the purchaser of the larger portion in value to have their custody, and to covenant with the other purchasers for their production, or, under the recent Act, to give them an acknowledgment of their right to production and an undertaking for safe custody. If, however, a vendor contracts for the sale of an estate, and the deeds relate not only to such estate but to other land retained by him, it is provided by the Vendor and Purchaser Act, 1874 (*i*), that he shall retain the deeds (*j*).

(*f*) Conveyancing Act, 1881, s. 8.
(*ff*) Sec. 56.
(*g*) Sykes *v.* Giles, 5 M. & W. 645.
(*h*) Parr *v.* Lovegrove, 4 Drew. 182, note.
(*i*) Sec. 2, rule 5.
(*j*) Sug. V. & P. 361, 13th Ed.

Vendor's obligation as to deeds, &c., when not delivered to purchaser.

If on the sale of part of an estate the deeds are retained by the vendor, and the purchase is completed without any covenant being entered into, or under the recent Act any acknowledgment being given by the vendor for their production, on a re-sale of the purchased estate it seems that the vendor could be compelled in equity to produce the deeds (*k*).

Old rule as to expense of attested copies under an open contract, and also as to covenants for production.

It was formerly the rule that, in the absence of an express stipulation to the contrary, the vendor was bound, at his own expense, to supply the purchaser with attested copies of the documents which were not delivered up to him, with the exception of instruments on record, and at the like expense to supply the purchaser with a covenant for their future production at his own expense, but under the recent Act the expense of copies must be borne by the purchaser requiring them (*l*); and instead of the covenant for production, which has been usually given, the Conveyancing Act, 1881, provides for the vendor giving to the purchaser an acknowledgment in writing of his (the purchaser's) right to production of the documents, and to delivery of copies thereof, and an undertaking for their custody.

Alterations in these respects under recent Act.

Provisions of Act as to production and safe custody of documents.

The provisions of the Act which relate to the production and safe custody of title-deeds will be found in the 9th section, which enacts—

Acknowledgment of right to production, and undertaking for safe custody of documents.

(1.) Where a person retains possession of documents, and gives to another an acknowledgment in writing of the right of that other to production of those documents, and to delivery of copies thereof (in this section called an acknowledgment), that acknowledgment shall have effect as in this section provided.

(2.) An acknowledgment shall bind the documents to which it relates in the possession or under the control of the person who retains them, and in the possession or under the control of every other person having possession or control thereof from time to time, but shall bind each individual possessor or person as long only as he has

(*k*) Fain *v.* Eyres, 2 Sim. & Stu. 533.

(*l*) Conveyancing Act, 1881, sect. 3, sub-sect. 6.

possession or control thereof; and every person so having possession or control from time to time shall be bound specifically to perform the obligations imposed under this section by an acknowledgment, unless prevented from so doing by fire or other inevitable accident.

(3.) The obligations imposed under this section by an acknowledgment are to be performed from time to time at the request in writing of the person to whom an acknowledgment is given, or of any person, not being a lessee at a rent, having or claiming any estate, interest, or right through or under that person, or otherwise becoming through or under that person interested in or affected by the terms of any document to which the acknowledgment relates.

(4.) The obligations imposed under this section by an acknowledgment are—

(i.) An obligation to produce the documents or any of them at all reasonable times for the purpose of inspection, and of comparison with abstracts or copies thereof, by the person entitled to request production or by any one by him authorized in writing; and

(ii.) An obligation to produce the documents or any of them at any trial, hearing, or examination in any court, or in the execution of any commission, or elsewhere in the United Kingdom, on any occasion on which production may properly be required, for proving or supporting the title or claim of the person entitled to request production, or for any other purpose relative to that title or claim; and

(iii.) An obligation to deliver to the person entitled to request the same true copies or extracts, attested or unattested, of or from the documents or any of them.

(5.) All costs and expenses of or incidental to the specific performance of any obligation imposed under this section by an acknowledgment shall be paid by the person requesting performance.

(6.) An acknowledgment shall not confer any right to damages for loss or destruction of, or injury to, the documents to which it relates, from whatever cause arising.

(7.) Any person claiming to be entitled to the benefit of an acknowledgment may apply to the Court for an order directing the production of the documents to which it relates, or any of them, or the delivery of copies of or extracts from those documents or any of them to him, or some person on his behalf; and the Court may, if it thinks fit, order production, or production and delivery, accordingly, and may give directions respecting the time, place, terms, and mode of production or delivery, and may make such order as it thinks fit respecting the costs of the application, or any other matter connected with the application.

(8.) An acknowledgment shall by virtue of this Act satisfy any liability to give a covenant for production and delivery of copies of or extracts from documents.

(9.) Where a person retains possession of documents and gives to another an undertaking in writing for safe custody thereof, that undertaking shall impose on the person giving it, and on every person having possession or control of the documents from time to time, but on each individual possessor or person as long only as he has possession or control thereof, an obligation to keep the documents safe, whole, uncancelled, and undefaced, unless prevented from so doing by fire or other inevitable accident.

(10.) Any person claiming to be entitled to the benefit of such an undertaking may apply to the Court to assess damages for any loss, destruction of, or injury to the documents or any of them, and the Court may, if it thinks fit, direct an inquiry respecting the amount of damages, and order payment thereof by the person liable, and may make such order as it thinks fit respecting the costs of the application, or any other matter connected with the application.

(11.) An undertaking for safe custody of documents shall by virtue of this Act satisfy any liability to give a covenant for safe custody of documents.

(12.) The rights conferred by an acknowledgment or an undertaking under this section shall be in addition to all such other rights relative to the production, or inspection, or the obtaining of copies of documents as are not, by virtue of this Act, satisfied by the giving of the acknow-

ledgment or undertaking, and shall have effect subject to the terms of the acknowledgment or undertaking, and to any provisions therein contained.

(13.) This section applies only if and as far as a contrary intention is not expressed in the acknowledgment or undertaking.

(14.) This section applies only to an acknowledgment or undertaking given, or a liability respecting documents incurred, after the commencement of this Act.

Vendor retaining deeds must give acknowledgment and undertaking.

It will be observed that the combined effect of the statutory acknowledgment and undertaking is to impose on the person giving them the same obligation as is involved in the covenant which was usually entered into by a trustee vendor before the Act, viz., an obligation binding on every person for the time being holding the deeds and ceasing when he parts with them—(1) to produce and deliver copies of them, and (2) to keep them safe, unless prevented by fire or other inevitable accident (*ll*). This being so, it is considered that every vendor, whether he is a beneficial owner or trustee, is bound to give the undertaking as well as the acknowledgment. If he gives the acknowledgment only, the purchaser will have no remedy in case the deeds are lost or destroyed from whatever cause such loss or destruction may arise, and it is unreasonable that he should be placed in such a position, because the vendor happens to be a trustee, particularly as the immunity will extend to all future holders of the deeds as well as to the original vendor (*m*).

Production of copies of Court roll.

If on the sale of copyholds the copies of Court roll are in the possession or power of the vendor, he is bound to

(*ll*) The form of covenant in the older precedent books omitted the last branch of the modern covenant, viz., to keep the deeds safe; but it is apprehended that its legal operation was precisely the same. The covenant being to produce the deeds, "unless prevented by fire or other inevitable accident," would have been broken if they had been lost or destroyed from any other cause than fire, &c.; and the modern covenant merely expresses what was implied in the older one.

(*m*) With reference to sub-secs. 8 and 11 of sec. 9, it is conceived that their proper interpretation is that where a person before the Act was bound to give a covenant involving a liability for safe custody (which it is submitted that every vendor under an open contract was), he must now give the undertaking.

produce them, but if not, the purchaser is not entitled to a covenant for their production, or an acknowledgment under the recent Act, as he may at any time resort to the rolls themselves (*n*).

One joint tenant, &c., to produce deeds to others.

A tenant in common, or joint tenant, who obtains possession of the title deeds, is entitled to retain them, but he will be bound to produce them for the inspection of his co-tenants (*o*).

Production of deeds by mortgagee.

It was formerly the general rule that a mortgagee could not be compelled to produce the deeds until he is paid off (*q*); but under the recent Act (as to mortgages made after the commencement thereof) a mortgagor, so long as his right to redeem subsists, is entitled, at his own cost, and on payment of the mortgagee's costs, to inspect and make copies or abstracts of or extracts from documents of title in the mortgagee's possession (*r*).

VI. *By whom the expenses of and incidental to the conveyance are to be borne.*

Costs of conveyance.

Where there is no stipulation on the subject of expenses, the costs of the conveyance and of all matters relating thereto must be borne by the purchaser, but the expense attendant on the execution and examination of the deed by or on account of the conveying parties must be paid by the vendor (*t*). And in the absence of stipulation, on the purchase of a copyhold estate, the purchaser must pay the expense of the surrender and his admittance (*u*). In a case where it was stipulated that the purchaser should have proper surrenders at his expense, it was held that the fine on admittance of the heir of the vendor who had died after the contract, was an extraordinary expense which must be borne by the vendor (*v*). Where the vendor agreed to surrender and assure the copyholds at his own costs, it was held that

Costs of surrender of and admission to copyholds.

(*n*) Cooper *v.* Emery, 1 Ph. 388.
(*o*) Lambert *v.* Rogers, 2 Mer. 489.
(*q*) Sparke *v.* Montriou, 1 Y. & C. 133.
(*r*) Conveyancing Act, 1881, sec. 16.
(*t*) Dart, 372.
(*u*) Sug. V. & P. 452.
(*v*) Paramore *v.* Greenslade, 1 Sm. & Gif. 541.

the vendor was not liable to pay the fine which became payable on the purchaser's admittance (*x*).

Expense of getting in incumbrances.

If the property is subject to incumbrances at the date of the contract, they must either be got in by a separate deed at the vendor's expense before the conveyance, or if they are released by the deed of conveyance, the expenses of the purchase deed, so far as they are increased by the concurrence of the incumbrancer in the same deed, may be thrown on the vendor (*y*). But the purchaser would not be entitled to throw such expense on the vendor when the mortgage debts to be paid off are assigned to a trustee for the purchaser's protection (*z*).

Vendor dying before completion.

If a person who has entered into a binding contract for sale has died before the 1st January, 1882, having devised the legal estate to an infant, his estate must bear the expense of the suit thus rendered necessary, but otherwise if he has died intestate leaving an infant heir (*a*).

Personal representatives of vendor dying after 1881 can convey.

In the case of a vendor dying after the 31st Dec. 1881, his personal representatives have power to convey the land to the purchaser (*aa*).

(*x*) Graham *v.* Sime, 1 East, 632.
(*y*) Sug. V. & P. 448; Reeves *v.* Gill, 1 Beav. 375.
(*z*) Dart, 471.
(*a*) Purser *v.* Darby, 4 Kay & J. 41; Scott *v.* Scott, 11 W. Rep. 766; Barker *v.* Venables, 11 Jur. 480.
(*aa*) Conveyancing Act, 1881, sec. 4.

VII. Stamps upon Conveyances.

Stamps on conveyances.

By the "Stamp Act, 1870" (33 & 34 Vict. c. 97), CONVEYANCES *upon the sale* of any property must be stamped with the following duties:—

	£	*s.*	*d.*
Where the amount or value of the consideration for the sale does not exceed £5 . . .	0	0	6
And where the same exceeds £5 and does not exceed £10	0	1	0
,, ,, 10 ,, 15	0	1	6
,, ,, 15 ,, 20	0	2	0
,, ,, 20 ,, 25	0	2	6
,, ,, 25 ,, 50	0	5	0
,, ,, 50 ,, 75	0	7	6
,, ,, 75 ,, 100	0	10	0
,, ,, 100 ,, 125	0	12	6
,, ,, 125 ,, 150	0	15	0
,, ,, 150 ,, 175	0	17	6
,, ,, 175 ,, 200	1	0	0
,, ,, 200 ,, 225	1	2	6
,, ,, 225 ,, 250	1	5	0
,, ,, 250 ,, 275	1	7	6
,, ,, 275 ,, 300	1	10	0
And where the consideration exceeds £300, then for every £50, and also for any fractional part of £50 of such amount or value . . .	0	5	0

Interpretation of term.

The term "Conveyance on Sale" includes every instrument, and every decree or order of any court or of any commissioners, whereby any property upon the sale thereof is legally or equitably transferred to or vested in the purchaser or any other person on his behalf or by his direction (*a*).

How *ad valorem* duty to be calculated in respect of stock and securities.

(1.) Where the consideration, or any part of the consideration, for a conveyance on sale consists of any stock or marketable security, such conveyance is to be charged with *ad valorem* duty in respect of the value of such stock or security.

(2.) Where the consideration, or any part of the consideration, for a conveyance on sale consists of any security not being a marketable security, such conveyance is to be charged with *ad*

(*a*) Sec. 70.

valorem duty in respect of the amount due on the day of the date thereof for principal and interest upon such security (*b*).

How consideration consisting of periodical payments to be charged.

(1.) Where the consideration, or any part of the consideration for a conveyance on sale consists of money payable periodically for a definite period, so that the total amount to be paid can be previously ascertained, such conveyance is to be charged in respect of such consideration with *ad valorem* duty on such total amount.

(2.) Where the consideration, or any part of the consideration, for a conveyance on sale consists of money payable periodically in perpetuity, or for any indefinite period not terminable with life, such conveyance is to be charged in respect of such consideration with *ad valorem* duty on the total amount which will or may, according to the terms of sale, be payable during the period of twenty years next after the day of the date of such instrument.

(3.) Where the consideration, or any part of the consideration, for a conveyance on sale consists of money payable periodically during any life or lives, such conveyance is to be charged in respect of such consideration with *ad valorem* duty on the amount which will or may according to the terms of sale, be payable during the period of twelve years next after the day of the date of such instrument.

(4.) Provided that no conveyance on sale chargeable with *ad valorem* duty in respect of any periodical payments, and containing also provision for securing such periodical payments, is to be charged with any duty whatsoever in respect of such provision, and no separate instrument made in any such case for securing such periodical payments is to be charged with any higher duty than 10*s*. (*c*).

How conveyance in consideration of a debt or subject to future payment, &c., to be charged.

Where any property is conveyed to any person in consideration wholly or in part, of any debt due to him, or subject either certainly or contingently to the payment or transfer of any money or stock, whether being or constituting a charge or incumbrance upon the property or not, such debt, money, or stock is to be deemed the whole or part, as the case may be, of the

(*b*) Sec. 71.
(*c*) Sec. 72. See Limmer Asphalte Paving Company *v.* Commissioners of Inland Revenue, L. R. 7 Ex. 211.

consideration, in respect whereof the conveyance is chargeable with *ad valorem* duty (*d*).

Direction as to duty in certain cases.

(1.) Where any property has been contracted to be sold for one consideration for the whole, and is conveyed to the purchaser in separate parts or parcels by different instruments, the consideration is to be apportioned in such manner as the parties think fit, so that a distinct consideration for each separate part or parcel is set forth in the conveyance relating thereto, and such conveyance is to be charged with *ad valorem* duty in respect of such distinct consideration.

(2.) Where property contracted to be purchased for one consideration for the whole by two or more persons jointly, or by any person for himself or others, is conveyed in parts or parcels by separate instruments to the persons by or for whom the same was purchased for distinct parts of the consideration, the conveyance of each separate part or parcel is to be charged with *ad valorem* duty in respect of the distinct part of the consideration therein specified.

(3.) Where a person, having contracted for the purchase of any property, but not having obtained a conveyance thereof, contracts to sell the same to any other person, and the property is in consequence conveyed immediately to the sub-purchaser, the conveyance is to be charged with *ad valorem* duty in respect of the consideration for the sale by the original purchaser to the sub-purchaser.

(4.) Where a person, having contracted for the purchase of any property, but not having obtained a conveyance, contracts to sell the whole, or any part or parts thereof, to any other person or persons, and the property is in consequence conveyed by the original seller to different persons in parts or parcels, the conveyance of each part or parcel is to be charged with *ad valorem* duty, in respect only of the consideration moving from the sub-purchaser thereof, without regard to the amount or value of the original consideration.

(5.) Where a sub-purchaser takes an actual conveyance of the interest of the person immediately selling to him, which is chargeable with *ad valorem* duty in respect of the consideration moving from him, and is duly stamped accordingly, any convey-

(*d*) Sec. 73.

ance to be afterwards made to him of the same property by the original seller shall be exempt from the said *ad valorem* duty, and chargeable only with the duty to which it may be liable under any general description, but such last mentioned duty shall not exceed the *ad valorem* duty (*e*).

As to the sale of an annuity or right not before in existence.

Where upon the sale of any annuity or other right not before in existence, such annuity or other right is not created by actual grant or conveyance, but is only secured by bond, warrant of attorney, covenant, contract, or otherwise, the bond or other instrument, or some one of such instruments, if there be more than one, is to be charged with the same duty as an actual grant or conveyance, and is for all the purposes of the Act to be deemed an instrument of conveyance on sale (*f*).

Where several instruments, the principal instrument only to be charged with *ad valorem* duty.

Where there are several instruments of conveyance for completing the purchaser's title to the property sold, the principal instrument of conveyance only is to be charged with *ad valorem* duty, and the other instruments are to be respectively charged with such other duty as they may be liable to, but such last mentioned duty shall not exceed the *ad valorem* duty payable in respect of the principal instrument (*g*).

Principal instrument how to be ascertained.

(1.) In the cases below specified the principal instrument is to be ascertained in the following manner.

(*a.*) Where any copyhold or customary estate is conveyed by a deed, no surrender being necessary, the deed is to be deemed the principal instrument.

(*b.*) In other cases of copyhold or customary estates the surrender or grant, if made out of Court, or the memorandum thereof, and the copy of court-roll of the surrender or grant, if made in Court, shall be deemed the principal instrument.

(*c.*) Where in Scotland there is a disposition or assignation executed by the seller, and any other instrument is executed for completing the title, the disposition or assignation is to be deemed the principal instrument.

(2.) In any other case the parties may determine for themselves which of several instruments is to be deemed the principal instrument, and may pay the *ad valorem* duty thereon accordingly (*h*).

(*e*) Sec. 74. (*f*) Sec. 75. (*g*) Sec. 76. (*h*) Sec. 77.

Separate deeds of covenant.

ANY SEPARATE DEED OF COVENANT (not *being an instrument chargeable with ad valorem duty as a conveyance on sale or mortgage*), made on the sale or mortgage of any property, and relating solely to the conveyance or enjoyment of, or the title to, the property sold or mortgaged, or to the production of the muniments of title relating thereto, or to all or any of the matters aforesaid, is chargeable with a duty equal to the *ad valorem* duty on the consideration or mortgage money, where the *ad valorem* duty shall not exceed 10*s.*, and in any other case with a duty of 10*s.* (*i*).

Duplicates.

THE DUPLICATE or counterpart of an instrument charged with duty must be stamped with the same duty as the original instrument where the duty does not amount to 5*s.*, and in any other case with a duty of 5*s.* The 93rd section of the "Stamp Act, 1870," provides that the duplicate or counterpart of an instrument chargeable with duty (except the counterpart of an instrument chargeable as a lease, such counterpart not being executed by or on behalf of any lessor or grantor), is not to be deemed duly stamped unless it is stamped as an original instrument, or unless it appears by some stamp impressed thereon that the full and proper duty has been paid upon the original instrument of which it is the duplicate or counterpart.

Unstamped instrument.

ANY unstamped or insufficiently stamped instrument may be stamped after its execution on payment of the unpaid duty, and also of a penalty of £10, and, where such duty shall exceed £10, interest after the rate of £5 per cent. per annum on the duty or deficiency of duty to be paid from the execution of the instrument, yet so that the amount of interest is not to exceed the sum to be paid on account of duty or deficiency of duty up to the time when such interest is equal in amount to the unpaid duty. Provided:—

(1.) That any unstamped or insufficiently stamped instrument which has been first executed at any place out of the United Kingdom may be stamped at any time within two months after it has been first received in the United Kingdom on payment of the unpaid duty only.

(2.) That the Commissioners may, if they think fit, at

(*i*) 33 & 34 Vict. c. 97, under the head "Covenant."

any time within twelve months after the first execution of any instrument, remit the penalty or any part thereof (*k*).

Until the deed or instrument is properly stamped, it cannot be offered in evidence (except in criminal cases) (*l*). The absence of the proper stamp, however, does not affect the validity of the deed.

Production of documents as evidence.

If a document, upon its production as evidence in any Court of Judicature in any part of the United Kingdom, is found not to be sufficiently stamped, the officer of the Court is empowered to receive and give a receipt for the unpaid duty and the penalty required by the statutes, and an additional penalty of £1. On this being done the document will be admissible in evidence, and the Commissioners are required to denote the payment of such duty and penalty on the instrument on the production of the receipt of the said officer (*m*).

Opinion of commissioners as to sufficiency of stamp.

Subject to such regulations as the Commissioners may think fit to make, they may be required by any person to express their opinion with reference to any executed instrument: (1) Whether it is chargeable with duty; (2) With what amount of duty it is chargeable. If the Commissioners determine that the instrument is not chargeable with duty, it may be stamped with a stamp denoting that it is not so chargeable. If they determine that it is chargeable with duty, they are to assess the duty with which in their opinion it is chargeable, and when the instrument is duly stamped in accordance with the assessment it may be also stamped with a particular stamp denoting that it is duly stamped (*n*). Any person dissatisfied with the assessment of the Commissioners may within twenty-one days after the assessment appeal against the assessment to Her Majesty's Court of Exchequer (*o*).

What is property within meaning of Stamp Act.

The transaction, in order to require an *ad valorem* stamp as upon a conveyance, must be a sale *of property*.

An assignment of personalty was made to trustees in trust to sell, and out of the proceeds to pay themselves the debts owing to them, and then the debts due to the other creditors, and to

(*k*) Sec. 15.
(*l*) Sec. 17. See Whiting *v.* Loomes, 17 Ch. D. 10.
(*m*) Sec. 16.
(*n*) Sec. 18.
(*o*) Sec. 19.

pay over the surplus to the assignees; this assignment was held to require only a common deed stamp (*p*). A conveyance by a father to his son in consideration of natural love, &c., and also of the provision which the son had that day made by bond of £1500 for his sister's portion, is not a sale (*q*). By a marriage settlement the uncle of the husband agreed, in consideration of the portion advanced by the lady, to pay to the trustees for the use of the husband and wife, during their joint lives, an annuity of £800: the Court held that this was not a sale, and did not require the deed to be stamped as a conveyance on the sale of property (*r*). Where an instrument which purported to be a release of land, but which not being by deed could not operate as such, contained a stipulation not to disturb the party who intended to take the premises, it was held to operate as an agreement, and to require a stamp appropriate to such instrument (*s*). In *Warren* v. *Howe* (*t*), it was decided that a judgment debt was not property within the meaning of the Stamp Act, title "Conveyance;" but this decision has been virtually overruled (*u*). It is also clear that an assignment of a policy of assurance is a conveyance on sale of property within the Stamp Act (*v*). In *Belcher* v. *Brymer* (*w*), two persons who had entered into certain contracts with the Victualling Office, agreed to dissolve partnership, and executed a deed whereby one agreed to resign to the other all his interest in those contracts, all debts due to the concern, and all share of the partnership property, and the other agreed to pay him £50,000, at which sum his share was valued; it was held on the authority of *Warren* v. *Howe*, that this was not a sale of property, and did not require an *ad valorem* stamp. But in a case where on a dissolution of a partnership, a deed was executed by which the retiring partner, in consideration of the sum of £17,313 part of the moneys and assets of the dissolved co-partnership, to him allowed in account as an equivalent for the value of his share, conveyed his share in the real assets to the continuing

(*p*) Coates *v.* Perry, 3 Brod. & B. 48.

(*q*) Denn *v.* Diamond, 4 B. & C. 243.

(*r*) Massey *v.* Nanney, 3 Bing. N. C. 478.

(*s*) 6 B. & C. 665.

(*t*) 2 B. & C. 281.

(*u*) See observations of Rolfe, B., on this point in Caldwell *v.* Dawson, 5 Ex. Rep. 1.

(*v*) Caldwell *v.* Dawson, 5 Ex. Rep. 1.

(*w*) 6 B. & C. 234.

partners, the deed was held to be a conveyance upon a sale so as to require an *ad valorem* stamp (*x*); and in *Potter* v. *The Commissioners of Inland Revenue* (*y*), it was held that the assignment of the *goodwill* of a trade required such stamp. So also where on the dissolution of a partnership between two persons, the share of the retiring partner was by deed conveyed to the other partner in consideration of £10,000, being the sum at which the share of the retiring partner was valued, this deed was held to be a conveyance of property within the meaning of the Stamp Act (*z*).

When an *ad valorem* stamp is imposed, a deed stamp is not necessary, though the former should be less in amount (*a*).

No additional stamp is necessary when the deed contains only what is incidental to the sale, as a covenant for the production of deeds or an assignment of terms to attend the inheritance (*b*).

Compound of purchase and mortgage.

If the instrument is a compound of a purchase and a mortgage, the deed must be stamped with the proper *ad valorem* duties, as on a purchase and mortgage for the specified sums.

15 & 16 Vict. c. 55.

The 15 & 16 Vict. c. 55, s. 13, provides that all vesting orders under the "Trustee Act, 1850," or, under that Act, having the effect of conveyances, &c., must be stamped as if they had been deeds.

No. I.

PARCELS *with* GENERAL WORDS.

PARCELS WITH GENERAL WORDS.

1. A close of land.

1. ALL THAT piece or parcel of meadow or pasture land commonly called or known by the name of ——, situate in the parish of ——, in the county of ——, containing by admeasurement ——, or thereabouts, and bounded on the north by land of ——, and on all other sides by land of ——, which piece or

(*x*) Phillips *v.* The Commissioners of Inland Revenue, L. R. 2 Ex. 399.
(*y*) 10 Ex. Rep. 147.
(*z*) Christie *v.* The Commissioners of Inland Revenue, L. R. 2 Ex. 46.
(*a*) Clayton *v.* Burtenshaw, 5 B. & C. 41.
(*b*) 2 Ad. & El., N. S. 321.

PARCELS WITH GENERAL WORDS.

parcel of land is in the occupation of ——, as yearly tenant thereof, and is delineated and coloured pink in the map or plan drawn in the margin of these presents (*c*).

2. A house in a suburb.

2. ALL THAT messuage or dwelling-house with the outbuildings, yard, and garden thereto belonging, commonly called —— cottage, situate in —— lane, in the parish of ——, in the county of ——, and now in the occupation of ——, as yearly tenant thereof, which premises contain together by admeasurement —— or thereabouts, and are delineated and coloured pink in the map or plan drawn in the margin of these presents (*d*).

3. A house in a street.

3. ALL THAT messuage or dwelling-house, with the outbuildings and yard belonging thereto, being No. 4, —— street, —— square, in the parish of ——, in the county of Middlesex, and

Introduction of general words no longer necessary.

(*c*) There can no longer be any advantage in setting out in the conveyance the "general words" which have hitherto followed immediately after the description of the parcels, as the Conveyancing Act, 1881, provides by the 6th section, that after the 31st of Dec., 1881, unless a contrary intention is expressed in the conveyance—

General words in conveyances of land, buildings, or manor.

"(1.) A conveyance of *land* shall be deemed to include and shall by virtue of this Act operate to convey, with the land, all buildings, erections, fixtures, commons, hedges, ditches, fences, ways, waters, watercourses, liberties, privileges, easements, rights, and advantages whatsoever, appertaining or reputed to appertain to the land, or any part thereof, or at the time of conveyance demised, occupied, or enjoyed with, or reputed or known as part or parcel of or appurtenant to the land or any part thereof.

"(2.) A conveyance of land, *having houses or other buildings thereon*, shall be deemed to include and shall by virtue of this Act operate to convey, with the land, houses, or other buildings, all outhouses, erections, fixtures, cellars, areas, courts, courtyards, cisterns, sewers, gutters, drains, ways, passages, lights, watercourses, liberties, privileges, easements, rights, and advantages whatsoever, appertaining or reputed to appertain to the land, houses, or other buildings conveyed, or any of them, or any part thereof, or at the time of conveyance demised, occupied, or enjoyed with, or reputed or known as part or parcel of or appurtenant to, the land, houses, or other buildings conveyed, or any of them, or any part thereof.

"(3.) A conveyance of a *manor* shall be deemed to include and shall by virtue of this Act operate to convey, with the manor, all pastures, feedings, wastes, warrens, commons, mines, minerals, quarries, furzes, trees, woods, underwoods, coppices, and the ground and soil thereof, fishings, fisheries, fowlings, courts leet, courts baron, and other courts, view of frankpledge and all that to view of frankpledge doth belong, mills, mulctures, customs, tolls, duties, reliefs, heriots, fines, sums of money, amerciaments, waifs, estrays, chief-rents, quit-rents, rentscharge, rents seck, rents of assize, fee farm rents, services, royalties, jurisdictions, franchises, liberties, privileges, easements, profits, advantages, rights, emoluments, and hereditaments whatsoever, to the manor appertaining or reputed to appertain, or at the time of conveyance demised, occupied, or enjoyed with the same, or reputed or known as part, parcel, or member thereof.

(*d*) See note (*c*), *suprà*.

now in the occupation of ——, under a lease dated the —— day of ——, for a term of —— years, commencing from the date of the said lease, at the yearly rent of ——, which messuage and premises are bounded, &c. (*e*). PARCELS WITH GENERAL WORDS.

4. All that plot, piece, or parcel of ground situate in the parish of ——, in the county of ——, on the north side of a new road or street now in course of formation, and called or intended to be called —— road, which plot, piece, or parcel of ground is bounded, &c., and contains in width from east to west —— feet or thereabouts, and in depth from north to south —— feet or thereabouts, and the same is delineated and coloured pink in the map or plan drawn in the margin of these presents. And also the messuage or tenement lately erected on the said plot, piece, or parcel of ground, and numbered or intended to be numbered —— in —— road aforesaid: And also full and free right and liberty in common with the owners and occupiers of the other messuages and premises in the said road or street, to pass and repass over and along the same road or street either with or without horses, carts, and carriages, at all times and for all purposes, the said ——, his heirs and assigns, paying a rateable proportion with the said other owners and occupiers, of the expense of keeping the said road or street in repair (*e*). 4. A plot of building land, with a house lately erected thereon, and a right of road.

5. All that farm, with the messuage, tenement, or farm-house, barns, stables, outhouses, closes, pieces, or parcels of land belonging thereto, called —— farm, situate in the parish of ——, in the county of ——, containing together by admeasurement —— or thereabouts, and in the occupation of —— as yearly tenant thereof, all which premises are more particularly described in the schedule hereunder written, and are delineated and coloured pink in the map or plan hereunto annexed, and referred to by the said schedule (*e*). 5. A farm and lands.

6. All that the manor or lordship of ——, or reputed manor or lordship of ——, in the county of ——, and all that the advowson or perpetual right of presentation of and to the rectory and parish church of ——, in the county of ——: And 6. A large estate, comprising manor, advowson, mansion house, and farms.

(*e*) See note, *supra*, p. 222.

PARCELS WITH GENERAL WORDS.

ALSO all that capital messuage or mansion house called —— Hall, situate in the parish of ——, with the stables, outbuildings, lawns, pleasure grounds, plantations, cottages, and pieces or parcels of land thereunto belonging, and held therewith, containing together by admeasurement —— or thereabouts, and now or late in the possession of the said (*vendor*) or his undertenants: AND ALSO all that farm, with the messuage, tenement, or farm-house, buildings, closes, and parcels of land belonging thereto, called —— farm, situate in the said parish of ——, containing together by admeasurement ——, and now in the occupation of ——, at the yearly rent of £——. AND ALSO all that farm, &c. (*describe it in the same way*), all which capital and other messuages, farms, lands, tenements, and hereditaments (except the said manor and advowson), are more particularly described in the schedule hereunder written, and are also delineated in the map or plan hereunto annexed and referred to by the said schedule (*f*).

7. Copyholds.

7. ALL THAT, &c. (*parcels as described in the Court Rolls*), To ALL which hereditaments hereinbefore described, the said A. B. (*vendor*) was admitted tenant at a court holden in and for the said manor, on the —— day of ——, (*or* "was admitted tenant out of court, on the —— day of ——.")

8. Freeholds and copyholds intermixed where they cannot be distinguished.

8. (F.) ALL SUCH and so many and such part or parts as is or are of freehold tenure of all, &c.

(C.) ALL SUCH and so many and such part or parts as is or are of copyhold or customary tenure of the hereditaments and premises hereinbefore described, and the freehold parts whereof are hereinbefore conveyed.

9. Freeholds and copyholds where they cannot be distinguished. (*Another Form.*)

9. (F.) ALL THOSE messuages or tenements, lands, and hereditaments, situate in the parish of ——, in the county of ——, particularly mentioned and described in the schedule hereunder written, and delineated in the map or plan hereunto annexed, and referred to by the said schedule: SAVE and except out of the conveyance intended to be hereby made, such and so many

(*f*) See note, *suprà*, p. 222.

and such part or parts of the hereditaments comprised in the said schedule as being of copyhold tenure is and are hereinafter covenanted to be surrendered.

PARCELS WITH GENERAL WORDS.

(C.) ALL THAT customary messuage, &c. (*parcels according to the ancient description in the Court Rolls*), To which premises the said A. B. was admitted tenant at a court holden in and for the said manor on the —— day of ——, And which premises hereby covenanted to be surrendered, are now better known as constituting the copyhold portion of the hereditaments described in the schedule hereunder written.

10. THE hereditaments described in the schedule hereto.

10. A very short form by reference to schedule.

No. II.

CONVEYANCE *of* FREEHOLDS *to a* PURCHASER *in* FEE.

CONVEYANCE OF FREEHOLDS TO PURCHASER IN FEE.

THIS INDENTURE, made the —— day of ——, BETWEEN A. B., of, &c. (*vendor*), of the one part, and C. D., of, &c. (*purchaser*), of the other part, WITNESSETH that in consideration of the sum of £—— as purchase-money to the said A. B., paid by the said C. D. on or before the execution of these presents (the receipt whereof the said A. B. hereby acknowledges (*a*)), the said A. B., as beneficial owner, hereby conveys (*b*) unto the said C. D. ALL, &c. (*parcels*); To HOLD the same unto and to the use of the

Parties.

Consideration.

Conveyance of parcels,

(*a*) The 54th section of the Conveyancing Act, 1881, enacts, as to deeds executed after the 31st December, 1881, that a receipt for consideration money or securities in the body of a deed shall be a sufficient discharge for the same to the person paying or delivering the same, without any further receipt for the same being indorsed on the deed; and the 55th section enacts, as to deeds executed after the same date, that a receipt for consideration money or other consideration in the body of a deed or indorsed thereon shall, in favour of a subsequent purchaser, not having notice that the money or other consideration thereby acknowledged to be received was not in fact paid or given, wholly or in part, be sufficient evidence of the payment or giving of the whole amount thereof.

Receipt in body of deed now to be sufficient.

(*b*) In the same Act it is declared that the use of the word "grant" shall not be necessary in order to convey tenements or hereditaments corporeal or incorporeal, and that in a *deed* it shall be sufficient in the limitation of an estate in fee simple to use the words "in fee simple" without the word "heirs." See sections 49, 51.

Grant.

Fee simple.

CONVEYANCE OF FREEHOLDS TO PURCHASER IN FEE.

said C. D. in fee simple (*c*): And the said A. B. hereby acknowledges the right of the said C. D. to production of the documents of title mentioned in the schedule hereto, and to delivery of copies thereof, and hereby undertakes for the safe custody thereof (*d*). In witness whereof the parties hereto have hereunto set their hands and seals the day and year first above written.

to purchaser in fee simple.

Acknowledgment by vendor of right of purchaser to production of documents and undertaking for their safe custody.

The Schedule above referred to.

Signed, sealed, and delivered by the within named A. B. in the presence of

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No. III.

CONVEYANCE OF FREEHOLDS (OLD FORM).

CONVEYANCE *of* Freeholds *to a* Purchaser *in* Fee, *with* Express Covenants *for* Title *and* Covenant *for the* Production *of* Deeds (*e*).

Parties.

THIS INDENTURE, made the —— day of ——, Between A. B., of, &c. (*vendor*), of the one part, and C. D., of, &c. (*purchaser*), of the other part: Whereas the said A. B. has agreed to sell to the said C. D. the hereditaments hereinafter described, and the inheritance thereof in fee simple in possession, free from incumbrances, at the price of £——: Now This Indenture Witnesseth that in pursuance

Recite agreement for sale.

Witnessing part.

(*c*) The "general words" which have been generally introduced after the description of the parcels are omitted for the reasons given at p. 222, *supra*; and there is also no occasion any longer to insert the "all the estate" clause, as the 63rd section of the recent Act provides that, unless a contrary intention is expressed in the conveyance, every conveyance made after the commencement thereof "shall, by virtue of this Act, be effectual to pass all the estate, right, title, interest, claim, and demand which the conveyancing parties respectively have in to or on the property conveyed or expressed or intended so to be or which they respectively have power to convey in to or on the same."

"All the estate" clause no longer necessary.

(*d*) In the absence of a stipulation to the contrary, a vendor retaining the title deeds must give this acknowledgment and undertaking, and the purchaser must be satisfied therewith. See *supra*, pp. 208, 209, 210. The acknowledgment will of course be omitted, if no deeds are retained by the vendor.

(*e*) A Precedent of a conveyance containing *express* covenants for title is inserted, as there may be circumstances in which a purchaser might wish to adopt the old form and not to rely on the Act.

of the said agreement, and in consideration of the sum of £—— to the said A. B., paid by the said C. D. on or before the execution of these presents (the receipt whereof the said A. B. doth hereby acknowledge), the said A. B. doth hereby convey unto the said C. D. and his heirs, ALL, &c. (*parcels*): TO HAVE AND TO HOLD the hereditaments and premises hereby conveyed, or expressed so to be, unto and to the use of the said C. D., his heirs and assigns for ever: [AND IT IS HEREBY declared by the said C. D. that if he shall leave a widow, such widow shall not be entitled to dower out of the said premises:] (*f*) AND THE SAID A. B. hereby (*ff*) covenants with the said C. D., his heirs and assigns, THAT notwithstanding any act, deed, or thing by the said A. B. [or by any of his ancestors] done or executed, or knowingly suffered to the contrary, the said A. B. now hath good right to convey the hereditaments and premises hereby conveyed, or expressed so to be, unto and to the use of the said C. D., his heirs and assigns, in manner aforesaid; AND THAT the said C. D., his heirs and assigns, shall and may at all times hereafter peaceably and quietly possess and enjoy the said hereditaments and premises, and receive the rents and profits thereof, without any lawful eviction, interruption, claim, or demand whatsoever, from or by the said A. B., or any person or persons lawfully or equitably claiming from, under, or in trust for him [or from or under any of his ancestors]: AND THAT free from all incumbrances whatsoever made or suffered by the said A. B. [or any of his ancestors], or any person or persons lawfully or equitably claiming as aforesaid: AND

CONVEYANCE OF FREEHOLDS (OLD FORM).
Consideration.
Receipt.
Vendor conveys.
Parcels.
To purchaser in fee.
Declaration against dower.
Covenants by vendor.
For right to convey.
For quiet enjoyment.
Free from incumbrances,
and for further assurance.

(*f*) It is the better opinion that as a purchaser has, under the present law, the power of depriving his wife of her dower out of the purchased property by a subsequent disposition by deed or will, there is no sufficient reason for negativing her right to dower by a declaration in the deed of conveyance, and that such declaration ought therefore to be omitted in the absence of special instructions or special circumstances. If such a declaration is embodied in the deed it is a bar, although the purchaser does not execute the conveyance. (Fairley *v.* Tuck, 6 W. Rep. 9.)

Declaration against dower seldom now introduced.

(*ff*) The words "for himself, his heirs, executors, and administrators" are now unnecessary. They were formerly inserted because specialty debts where the heir was expressed to be bound had a priority over other debts in the administration of assets, but this is no longer the case; and now by the 59th section of The Conveyancing Act, 1881, it is provided, as to covenants made or implied after the commencement of the Act, that a covenant though not expressed to bind the heirs, shall operate to bind the heirs and real estate as well as the executors and administrators of the person making the same as if heirs were expressed.

In covenants the words "for himself, his heirs," &c., no longer necessary.

CONVEYANCE OF FREEHOLDS (OLD FORM).

FURTHER, THAT the said A. B., and all persons having or lawfully or equitably claiming any estate or interest in the said hereditaments and premises, or any of them, or any part thereof, from, under or in trust for him the said A. B., [or from or under any of his ancestors,] shall and will from time to time, and at all times hereafter, at the request and cost of the said C. D., his heirs, or assigns, do and execute, or cause to be done and executed, all such acts, deeds, and things whatsoever, for further and more perfectly assuring the said hereditaments and premises, and every part thereof, unto and to the use of the said C. D., his heirs and assigns, in manner aforesaid, as shall or may be reasonably required. [AND THE SAID A. B. doth hereby covenant with the said C. D., his heirs and assigns, that the said A. B., his heirs and assigns, will, unless prevented by fire or some other inevitable accident, from time to time and at all times hereafter upon every reasonable request, and at the cost of the said C. D., his heirs or assigns, produce or cause to be produced to him or them, or his or their solicitors or agents, or at any trial, hearing, commission, examination, or otherwise as occasion shall require, all or any of the deeds and writings comprised in the schedule hereto, for the purpose of showing his or their title to the hereditaments and premises hereby conveyed, or expressed so to be, or any part thereof; AND ALSO at the like request and cost deliver or cause to be delivered unto the said C. D., his heirs or assigns, such attested or other copies or extracts of or from the said deeds and writings, or any of them, as he or they may require; AND will in the meantime, unless prevented as aforesaid, keep the same deeds and writings safe, unobliterated and uncancelled] (*g*).

Covenant to produce deeds.

IN WITNESS, &c.

THE SCHEDULE ABOVE REFERRED TO.

(*g*) This form for securing the production of deeds left in the hands of the vendor may still be used if the parties wish to do so, but it is apprehended that in future, for the covenant that has usually been given, an acknowledgment of the right of the purchaser to the production of the documents and an undertaking for their safe custody, except in very special cases, will be substituted. Conveyancing Act, 1881, sect. 9, *supra*, p. 208.

No. IV.

APPOINTMENT *and* CONVEYANCE *of* FREEHOLDS *to a* PURCHASER *to* USES *to bar* DOWER (*a*).

APPOINTMENT AND CONVEYANCE TO USES TO BAR DOWER.

THIS INDENTURE, made the —— day of ——, BETWEEN —— Parties. A. B., of, &c. (*vendor*), of the first part; C. D., of, &c. (*purchaser*), of the second part; and E. F., of, &c. (*dower-trustee*), of the third part: WHEREAS by an indenture dated the ——

(*a*) A widow, whose marriage took place before the 1st of January, 1834, is entitled to dower out of all corporeal hereditaments, and also out of all incorporeal hereditaments which savour of the realty, as for instance, advowsons appendant or in gross, tithes, rents, franchises, commons appendant, &c., of which her husband was solely seised for any legal estate of inheritance in possession at any time during the coverture and which the issue, if any, of the wife might by possibility inherit, but not out of equitable estates, nor out of an estate of which her husband was joint-tenant if he dies before his co-tenant. (Co. Litt. 31 b.) A widow is not dowable out of property which may go to the heir, if it is personal in its nature (1 Bro. C. C. 377); or out of real estate of the husband which in equity would go to his executors as personal estate. (Phillips *v.* Phillips, 1 My. & K. 649.) But she is dowable in respect of a base fee during its subsistence (Doe d. Neville *v.* Rivers, 7 Tr. 276); and in respect of an estate tail, although the husband may die without issue (Paine's Case, 8 Co. Rep. a): and in respect of an estate limited to the husband in fee simple, subject to a limitation over in case he has no issue, although there may be default of issue. (Moody *v.* King, 2 Bing. 447.) The widow's right to dower will not be defeated by the escheat of the estate for want of heirs (Jenk. 6). If lands were limited to such uses as her husband should appoint, and subject thereto to the use of himself in fee, the wife's right to dower might be displaced by an exercise of the power. (Maundrell *v.* Maundrell, 10 Ves. 265; Ray *v.* Pung, 5 Madd. 310.)

Where widow entitled to dower under old law.

The Dower Act, 3 & 4 Wm. 4, c. 105, relates only to the dower of any widow married after the 1st of January, 1834; and it is provided by the 2nd section of that Act, that when a husband shall die beneficially entitled to any land for an interest which shall not entitle his widow to dower out of the same at law, and such interest, whether wholly equitable, or partly legal and partly equitable, shall be an estate of inheritance in possession, or equal to an estate of inheritance in possession (other than an estate in joint tenancy), then his widow shall be entitled in equity to dower out of the same land. The 3rd section of the Act provides, that when a husband shall have been entitled to a right of entry or action in any land, and his widow would be entitled to dower out of the same if he had recovered possession thereof, she shall be entitled to dower out of the same, although her husband shall not have recovered possession thereof provided such dower is sued or obtained within the period during which such right of entry or action might be enforced.

Dower Act.

A seisin in law was necessary before the Act, but now a mere right to

What con-

APPOINTMENT AND CONVEYANCE TO USES TO BAR DOWER.

day of ——, and made between G. H. of the first part, the said A. B. of the second part, and M. N. of the third part, the hereditaments hereinafter described were conveyed to such uses as the said A. B., by any deed or deeds should appoint, and in default of such appointment, and so far as any such appoint-

Recite conveyance to vendor to uses to bar dower.

stitutes title to dower.

the land will give a title to dower. The widow, however, must make her claim within the period allowed by the combined operation of 3 & 4 Wm. 4, c. 27, ss. 2, 3, 24, and the Real Property Limitation Act, 1874. The Dower Act also provides, that the widow may be deprived by her husband of her right to dower, not only by a declaration in a deed that she shall not be entitled to dower, but by an absolute disposition of the property in his lifetime, or by his will, or by a declaration in a conveyance to the husband, or by any deed executed by him, or by a declaration in his will, that she shall not be entitled to dower (ss. 4, 6, 7). The 5th section provides that all partial estates and all charges created by any disposition or will of a husband, and all debts, incumbrances, contracts, and engagements to which his land shall be subject, shall be valid as against the wife's right to dower. If the husband devises any land to his widow, out of which she could be dowable if the same had not been so devised, her right to dower is thereby destroyed in respect of any land of her husband, unless the will provided to the contrary (s. 9). But the Act does not prevent a court of equity from enforcing any covenant or agreement entered into by the husband not to bar the right of his widow to dower out of his lands or any of them (s. 11).

The consequences of the 9th section may be remarkable. A woman may have acquired a right to dower out of a large freehold estate,—a right which in the absence of any devise to her by her husband would be paramount to the claims of all his creditors,—and yet that right may be defeated by the husband devising only a small part of such estate to his wife for no longer a period than her life, even although in the event she may be deprived of all benefit under this devise from the whole of the testator's real estate being required for the payment of his debts. (See Rowland *v.* Cuthbertson, L. R. 8 Eq. 406.)

Where property should be limited to uses to bar dower.

It follows from the Dower Act that where a purchaser has a wife living, whom he married before the 1st of January, 1834, it is necessary to limit the property to him in such a manner as that he may not have a legal estate of inheritance. This is effected by means of the ordinary uses to bar dower. Under such uses and subject to the power of appointment, the purchaser takes *at law* only an estate for his life, with an ultimate remainder in fee, which is prevented from merging the life estate by the intervention of the estate given to the dower-trustee. If the power of appointment is omitted, a technically complete conveyance cannot be made without the concurrence of the dower-trustee ; but in a case where the power was omitted, and the dower-trustee was in Australia, the Court treated an objection founded on his non-concurrence as frivolous and vexatious. (Collard *v.* Roe, 4 De G. & J. 525.)

What Act extends to.

The Dower Act extends to lands of gavelkind tenure (Farley *v.* Bonham, 2 J. & H. 177) ; but not to copyholds (Powdrell *v.* Jones, 2 S. & G. 407), or to freebench (Smith *v.* Adams, 5 De G. M. & G. 7).

Fry v. *Noble.*

Where property, before 1834, was conveyed to the husband, who was then married to a former wife, to the usual uses to bar dower, with a declaration that his present or any future wife should not be entitled to dower, it was held that his widow, whom he married after the 1st January, 1834, was entitled to dower. (Fry *v.* Noble, 20 Beav. 598 ; 7 De G. M. & G. 687 ; Clarke *v.* Franklin, 4 K. & J. 266.)

ment should not extend, to the use of the said A. B. during his life without impeachment of waste, with a limitation to the use of the said M. N., his executors and administrators, during the life of the said A. B., in trust for the said A. B., with remainder to the use of the said A. B., in fee simple: AND WHEREAS the said A. B. hath agreed to sell to the said C. D. the said hereditaments at the price of £——: AND WHEREAS the said C. D. is desirous that the same shall be limited to the uses hereinafter mentioned; NOW THIS INDENTURE WITNESSETH, that in consideration, &c. (*the receipt, &c., supra*, p. 225), the said A. B., as beneficial owner, in exercise of the power for this purpose given to him by the herein-before recited indenture, and of all other powers (if any) him hereunto enabling, hereby appoints that the hereditaments hereinafter described, shall henceforth go, remain, and be to the uses hereinafter declared concerning the same: AND THIS INDENTURE ALSO WITNESSETH, that for the consideration hereinbefore expressed, the said A. B., as beneficial owner, hereby conveys unto the said C. D. ALL, &c. (*parcels*): TO HOLD the same unto the said C. D. in fee simple, to the uses hereinafter declared concerning the same: AND IT IS HEREBY DECLARED, that the appointment and conveyance herein-before respectively contained, shall operate and enure, To SUCH USES as the said C. D. by any deed or deeds shall from time to time appoint, AND in default of and until such appointment, and so far as any such appointment shall not extend, To THE USE of the said C. D. during his life without impeachment of waste, AND AFTER the determination of that estate by any means in his life-time, To THE USE of the said E. F., during the life of the said C. D., IN TRUST for the said C. D. AND AFTER the determination of the estate so limited to the said E. F. as aforesaid, To THE USE of the said C. D. in fee simple.

IN WITNESS, &c.

APPOINTMENT AND CONVEYANCE TO USES TO BAR DOWER.

Agreement for sale.

First witnessing part.

Vendor appoints.

To uses after declared.

Second witnessing part.

Vendor conveys to purchaser.

Parcels.

To uses after declared.

Declaration that appointment and grant shall enure to uses to bar dower in favour of purchaser.

No. V.

APPOINTMENT AND CONVEYANCE IN FEE.

APPOINTMENT *and* CONVEYANCE *of* FREEHOLDS *to a* PURCHASER *in* FEE.

Parties.

THIS INDENTURE, made the —— day of ——, BETWEEN A. B., of, &c. (*vendor*), of the one part, and C. D., of, &c. (*purchaser*), of the other part (*Recite conveyance to uses to bar dower, and agreement for sale as in last precedent*): NOW THIS INDENTURE WITNESSETH, that in consideration, &c. (*the receipt, &c., suprà*, p. 225), THE said A. B., as beneficial owner,

Vendor conveys to purchaser in fee.

in exercise of the power for this purpose given to him by the hereinbefore recited indenture and of all other powers (if any) him hereunto enabling, hereby appoints and hereby also conveys unto the said C. D. ALL, &c. (*parcels*): TO HOLD the same unto and to the use of the said C. D. in fee simple (*add acknowledgment of right to production of documents and undertaking for safe custody if applicable, suprà*, p. 226).

IN WITNESS, &c.

No. VI.

CONVEYANCE OF FREEHOLDS SUBJECT TO LEASE FOR 99 YEARS.

CONVEYANCE *of* FREEHOLDS *subject to* LEASE *for* NINETY-NINE YEARS.

Parties.

THIS INDENTURE, made, &c., BETWEEN A. B., of, &c. (*vendor*), of the one part, and C. D., of, &c. (*purchaser*), of the other part: WHEREAS by an indenture dated, &c., and made between (*parties*), the hereditaments hereinafter described were demised by the said A. B. unto the said E. F., his executors, administrators, and assigns, for the term of ninety-nine years, from the —— day of —— then last past, at the yearly rent of £——, and subject to the covenants and conditions therein con-

Recite lease by vendor for ninety-nine years.

tained, and on the part of the lessee to be observed and performed: AND WHEREAS the said A. B. hath agreed to sell to the said C. D. the fee simple of the said hereditaments subject to the said indenture of the —— day of ——, at the price of £——: NOW THIS INDENTURE WITNESSETH, that in consideration, &c. (*the receipt, &c.*), the said A. B., as beneficial owner, hereby conveys unto the said C. D., ALL those pieces or parcels of land situate, &c., and bounded, &c., and the ground plot whereof is delineated in the plan drawn in the margin of the first skin of these presents: AND all the messuages or dwelling-houses and other erections which have been erected and are now standing on the said pieces or parcels of land or some portions thereof: TOGETHER WITH the rent reserved by the said indenture of lease and the benefit of the lessee's covenants therein contained: TO HOLD the same (subject to the said indenture of lease and the term thereby granted), unto and to the use of the said C. D. in fee simple.

IN WITNESS, &c.

CONVEYANCE OF FREEHOLDS SUBJECT TO LEASE FOR 99 YEARS.

Agreement for sale of hereditaments, subject to lease.

Conveyance of hereditaments,

together with benefit of rents, &c. reserved by lease.

To purchaser in fee, subject to lease.

No. VII.

CONVEYANCE *of* FREEHOLD HOUSES *subject to numerous* LEASES *at* GROUND RENTS.

OF FREEHOLD GROUND RENTS.

THIS INDENTURE made the —— day of ——, BETWEEN A. B., of, &c. (*vendor*), of the one part, and C. D., of, &c. (*purchaser*), of the other part: WHEREAS the said A. B. is seised in fee simple of the hereditaments described in the first column of the schedule hereto, subject to the several indentures of lease mentioned in the second column of the said schedule, by which indentures the said hereditaments were demised to the several persons named in the third column of the said schedule for the several terms of years and at the yearly rents mentioned in the fourth and fifth columns of the said schedule, and subject to the covenants and conditions in the said indentures respectively contained and on the lessees' part to be observed and

Parties.

Recital of vendor's seisin.

OF FREEHOLD GROUND RENTS.

Agreement for sale. Witnessing part. Consideration.

Conveyance by vendor to purchaser. Parcels.

Habendum to purchaser in fee subject to leases.

performed: And whereas the said A. B. has agreed to sell to the said C. D. the fee simple of the said hereditaments subject to the said leases at the price of £——: NOW THIS INDENTURE WITNESSETH that in pursuance of the said agreement and in consideration of the sum of £—— as purchase-money paid to the said A. B. by the said C. D. on or before the execution of these presents (*the receipt, &c.*), The said A. B., as beneficial owner, hereby conveys unto the said C. D. All those pieces or parcels of ground, messuages, and hereditaments described in the first column of the schedule hereto, and all other (if any) the hereditaments comprised in the several indentures of lease mentioned in the second column of the said schedule, Together with the rents reserved by the said indentures of lease, and the benefit of the covenants and conditions therein respectively contained, and on the lessees' part to be observed and performed: To hold the same (subject to the said indentures of lease and the terms of years thereby respectively created) unto and to the use of the said C. D. in fee simple. In witness, &c.

The Schedule above referred to.

Description of Property.	Lease.	Lessee.	Term.	Rent.
1. All that piece or parcel of ground, &c. (*describing it as in lease*), and the messuage or dwelling house erected thereon, now known as, &c.	Indenture dated, &c., and made between (*state date and parties*).	G. H.	99 years, computed from, &c.	£——
2. All that, &c.	Indenture, &c. (*as above*).	J. K.	99 years, computed from, &c.	£——

No. VIII.

CONVEYANCE *of a* REVERSION EXPECTANT *on a* LEASE *to the* LESSEE *who* PURCHASES *under an* OPTION *of* PURCHASE *given to him* BY *the* LEASE. CONVEYANCE OF REVERSION EXPECTANT ON LEASE TO LESSEE.

THIS INDENTURE, made the —— day of ——, BETWEEN A. B., of, &c. (*vendor*), of the one part, and C. D., of, &c. (*purchaser*), of the other part (*Recite lease from A. B. to C. D. with power to lessee to purchase for the sum of* £——); AND WHEREAS the said C. D. has signified to the said A. B. his desire to purchase the reversion and inheritance in fee simple of the hereditaments comprised in the said indenture of lease expectant on the term thereby granted at the price of £——: NOW THIS INDENTURE WITNESSETH, that in pursuance of the provision in this behalf contained in the hereinbefore recited indenture of lease as aforesaid, and in consideration, &c. (*the receipt, &c.*), the said A. B., as beneficial owner, hereby conveys and releases unto the said C. D., ALL, &c. (*parcels*): TO HOLD the same unto and to the use of the said C. D. in fee simple, To the END and intent that the said term of —— years, granted by the hereinbefore recited indenture of lease, may be merged and extinguished in the reversion and inheritance of the said premises.

Parties. Recite lease. That lessee had signified his desire to purchase. Witnessing part. Lessor conveys reversion to lessee in fee.

IN WITNESS, &c.

No. IX.

DEED *of* COVENANT *to surrender a* COPYHOLD ESTATE. COPYHOLDS.

THIS INDENTURE, made the —— day of ——, BETWEEN A. B., of, &c. (*vendor*), of the one part, and C. D., of, &c. (*purchaser*), of the other part: WITNESSETH, that in consideration, &c. (*the receipt, &c., suprà, p.* 225), the said A. B., as

Parties. Witnessing part. Consideration.

COPYHOLDS. beneficial owner (*a*), hereby covenants with the said C. D., that
Vendor covenants to surrender he the said A. B. will forthwith, at the cost of the said C. D., surrender or cause to be surrendered into the hands of the lord of the manor of ——, in the county of ——, according to the
copyholds to purchaser in fee. custom of the said manor, ALL, &c. (*parcels*), TO THE USE of the said C. D., in customary fee simple, at the will of the lord of the said manor, according to the custom of the said manor, by and under the rents, suits, and services therefor due and of right accustomed.

IN WITNESS, &c.

No. X.

SURRENDER OF COPYHOLDS. SURRENDER *out of* COURT *of* COPYHOLDS *to a* PURCHASER.

The MANOR *of* ——, } BE IT REMEMBERED, that on
in the county of —— } this —— day of ——, A. B., of, &c.
Considera-tion. (*vendor*) comes before L. M., of, &c., steward of the manor out of court, and in consideration of the sum of £—— to him paid by
Surrender of copyholds C. D., of, &c. (*purchaser*), surrenders into the hands of the lord of the manor, by the hands and acceptance of his said steward, according to the custom of the manor, ALL, &c.
to purchaser in fee. (*parcels*): TO THE USE of the said C. D. (*b*), his heirs and assigns for ever, at the will of the lord, according to the custom of the manor, at and under the rents, suits, and services therefor due and of right accustomed (*c*).

This surrender was taken and accepted the day and year above written by me.

Signed L. M. (*steward*),
Steward of the Manor.

Copyholds are within 7th section of Act. (*a*) The interpretation clause in the Conveyancing Act, 1881, provides that the term "conveyance" shall include "covenant to surrender." It follows that if the vendor as beneficial owner covenants to surrender, covenants for title will be implied.

(*b*) The 51st section of the Conveyancing Act, 1881, rendering unnecessary the use of the word "heirs" in the limitation of an estate in fee simple, only applies to such a limitation in a *deed*.

(*c*) The lord of the manor cannot be compelled to accept a surrender to such uses as the purchaser shall appoint, and in default of and until appoint-

No. XI.

ASSIGNMENT *of a* LEASEHOLD MESSUAGE *to a* PURCHASER (*a*). ASSIGNMENT OF LEASEHOLDS.

THIS INDENTURE, made the —— day of ——, BETWEEN A. B., of, &c. (*vendor*), of the one part, and C. D., of, &c. (*purchaser*), of the other part: WHEREAS by an indenture of lease, dated the —— day of ——, and made between G. H., of the one part, and the said A. B., of the other part, ALL that messuage or tenement, &c. (*parcels as described in the lease*), were demised by the said G. H. unto the said A. B., his executors, administrators, and assigns, from the —— day of ——, then last past, for the term of —— years, at the yearly rent of £——, and subject to the covenants and conditions in the said indenture of lease contained, and on the part of the lessee, to be observed and performed: AND WHEREAS the said A. B. hath agreed to sell to the said C. D., the messuage and premises comprised in the said indenture of lease for the residue now unexpired of the said term of —— years, subject to the said rent, covenants, and conditions, at the price of £——: NOW THIS INDENTURE WITNESSETH, that in consideration of the sum of £——, to the said A. B. paid by the said C. D. on or before the execution of these presents, (the receipt whereof the said A. B. hereby acknowledges), the said A. B. as beneficial owner, hereby assigns unto the said C. D. THE messuage and premises comprised in and demised by the hereinbefore recited indenture of lease; TO HOLD the same unto the said C. D. (*b*) for all the residue now unexpired of the said term of —— years, subject

Recite lease.

Agreement for sale.

Assignment of parcels in lease for residue of term.

Subject to

ment to the use of the purchaser in fee. (Flack *v.* Master, &c., of Downing College, 13 C. B. 945.)

(*a*) If the purchaser is a married woman, she will be described as "C. D., wife of E. D.," and it will be stated that the purchase money is paid out of her separate property. In other respects the form will be the same as No. XI., *supra*, substituting "she" for "he" and "her" for "him," when necessary.

Proper form of assignment of leaseholds to a married woman.

It is also to be observed that a lease to a married woman will be in the same form as a lease to a man, substituting "she" for "he" and "her" for "him," when necessary.

Proper form of lease to a married woman.

(*b*) It has been hitherto usual in an assignment of leaseholds and other personal property to add the words "his executors, administrators, and assigns," after the name of the assignee, not because such words were essential, but by analogy to a limitation of freeholds to "heirs." As the word "heirs" is now unnecessary under the recent Act, and is accordingly discontinued in this edition, the words "his executors, administrators, and assigns," are omitted also.

In assignment of leaseholds, words "his executors, administrators, and assigns" now omitted.

ASSIGNMENT OF LEASEHOLDS.

to the rent reserved by the said indenture, and the covenants and conditions in the same indenture contained, and which henceforth on the part of the lessee, ought to be observed and performed,

Rent and observance of lessee's covenants.

AND THE said C. D. (*b*) hereby covenants with the said A. B. that the said C. D., his executors, administrators, and assigns, will during the residue of the said term pay the rent reserved by the said indenture of lease, and observe and perform the covenants and conditions therein contained, and which henceforth on the lessee's part ought to be observed and performed, and will keep indemnified the said A. B. and his estate and effects from and against all claims and demands for or on account of the same (*c*).

Covenant by purchaser to pay rent and observe covenants in lease.

No. XII.

ASSIGNMENT OF LEASEHOLDS (OLD FORM).

ASSIGNMENT *of a* LEASEHOLD MESSUAGE *to a* PURCHASER *with* EXPRESS COVENANTS *for* TITLE (*a*).

Parties.

THIS INDENTURE, made the —— day of ——, BETWEEN A. B., of, &c. (*vendor*), of the one part, and C. D., of, &c. (*purchaser*), of the other part. (*Recite lease and agreement for sale as in last precedent.*)

Witnessing part.

NOW THIS INDENTURE WITNESSETH,

Consideration.

that in consideration, &c. (*the receipt, &c.*) the said A. B. doth hereby assign unto the said C. D., his

(*b*) The reason for the omission of the words "for himself, his heirs, executors, and administrators," is given, *supra*, p. 227, note (*ff*).

When purchaser bound to covenant with assignor.

(*c*) An assignee of a leasehold interest is not liable for the rent and covenants contained in the lease, after he has executed an assignment of the lease to another person; so that if the vendor of a leasehold interest is not the original lessee, but an assignee, or the representative of an assignee, he is not entitled to a covenant from the purchaser for the payment of the rent and the observance of the covenants, unless he, the vendor, is under the obligation of a covenant for the payment and observance of such rent and covenants.

Original lessee has right to be indemnified.

In the absence of any express covenant, the original lessee has a legal right to be indemnified by the holder of the lease for the time being against breaches of covenant committed during his tenancy, whether such holder takes by assignment directly from the lessee, or after mesne assignments. Moule *v.* Garrett, L. R. 7 Exch. 101.

(*a*) A Precedent of an assignment of leaseholds, with express covenants for title, is inserted, as there may be circumstances in which a purchaser might wish to adopt the old form, and not to rely on the Act.

executors, administrators, and assigns, THE messuage and premises comprised in and demised by the hereinbefore recited indenture of lease, or expressed so to be (*b*): TO HAVE AND TO HOLD the messuage and premises hereby assigned, or expressed so to be, unto the said C. D., his executors, administrators, and assigns, for all the residue now unexpired of the said term of —— years, subject to the rent reserved by the said indenture of lease, and the covenants and conditions in the same indenture contained, and which henceforth, on the part of the lessee, his executors, administrators, or assigns, ought to be observed and performed: AND THE SAID A. B. hereby covenants with the said C. D., his executors, administrators, and assigns, THAT notwithstanding any act, deed, or thing by the said A. B. done or executed, or knowingly suffered to the contrary, the hereinbefore recited indenture of lease is now a good and effectual lease in the law of the messuage and premises hereby assigned, or expressed so to be, and has not been forfeited or surrendered, or become void or voidable: AND THAT the rent, covenants, and conditions, by and in the said indenture of lease reserved and contained, have, on the lessee's part, been duly paid, observed, and performed, up to the date of these presents: AND THAT notwithstanding any such act, deed, or thing as aforesaid, the said A. B. now hath good right to assign the said messuage and premises unto the said C. D., his executors, administrators, and assigns, for the residue of the said term, and in manner aforesaid: AND THAT the said C. D., his executors, administrators, and assigns, shall and may at all times hereafter during the said term of —— years, peaceably and quietly possess and enjoy the said messuage and premises, and receive the rents and profits thereof, without any lawful eviction, claim or demand whatsoever from or by the said A. B., or any person or persons lawfully or equitably claiming from, under, or in trust for him: AND THAT free from all incumbrances whatsoever, made, occasioned, or suffered by the said A. B., or by any person or persons lawfully or equitably

ASSIGNMENT OF LEASEHOLDS (OLD FORM).

Vendor assigns.

Parcels.

To purchaser for residue of term.

Covenants by vendor

that lease is valid,

and rent and covenants have been paid and performed;

for right to assign;

for quiet enjoyment during term;

free from incumbrances;

(*b*) The parcels should be described with reference to the indenture of lease, the recital of which should set forth the parcels as they are described in the lease. If the property is, at the date of the assignment, known by a different description, or any buildings have been erected on the premises since the lease, so as to require notice in the operative part, this should be done by way of addition to the old description.

ASSIGNMENT OF LEASEHOLDS (OLD FORM).

claiming as aforesaid: AND FURTHER, that the said A. B., and all persons having or lawfully or equitably claiming any estate or interest in the said messuage and premises, or any part thereof, from, under, or in trust for him, shall and will from time to time and at all times hereafter during the said term of —— years, at the request and cost of the said C. D., his executors, administrators, and assigns, do and execute, or cause to be done and executed, all such acts, deeds, and things whatsoever, for further and more perfectly assuring the said messuage and premises unto the said C. D., his executors, administrators, or assigns, for the unexpired residue of the said term of —— years, as shall or may be reasonably required: AND THE SAID C. D. hereby covenants with the said A. B., his executors and administrators, that the said C. D., his executors, administrators, and assigns, will at all times hereafter during the said term of —— years pay the yearly rent reserved by the said indenture of lease, and observe and perform all the covenants and conditions contained in the same indenture, and henceforth on the part of the lessee, his executors, administrators, or assigns, to be observed and performed, and will at all times hereafter keep indemnified the said A. B., his heirs, executors, and administrators, and his and their estate and effects, from and against the payment of the said rent, and the observance and performance of the said covenants and conditions, and all actions, claims, and demands whatsoever, for or on account of the same, or in anywise relating thereto.

and for further assurance.

Covenant by purchaser,

to pay rent and observe covenants,

and to indemnify vendor from rent and lessee's covenants.

IN WITNESS, &c.

No. XIII.

ASSIGNMENT OF PROPERTY COMPRISED IN SEVERAL LEASES.

ASSIGNMENT *of Property comprised in* SEVERAL LEASES *to a* PURCHASER *for the residue of the* SEVERAL TERMS.

Parties.

THIS INDENTURE, made, &c., BETWEEN A. B., of, &c. (*vendor*), of the one part, and C. D., of, &c. (*purchaser*), of the other part: WHEREAS by an indenture of lease dated the —— day of ——, and made between G. H. of the one part, and the

said A. B. of the other part, ALL, &c. (*parcels as in the lease*) were demised by the said G. H. unto the said A. B., his executors, administrators, and assigns for the term of —— years, computed from the date of the said indenture, at the yearly rent of £——, and subject to the covenants and conditions therein contained, and on the part of the lessee, to be observed and performed: AND WHEREAS by an indenture of lease dated the —— day of ——, and made between L. M. of the one part, and the said A. B. of the other part, ALL, &c. (*parcels as in the lease*), were demised by the said L. M. unto the said A. B., his executors, administrators, and assigns for the term of —— years, computed &c., at the yearly rent of £——, and subject to the covenants and conditions therein contained, and on the part of the lessee, to be observed and performed: AND WHEREAS pursuant to a covenant in that behalf contained in the last recited indenture, the said A. B. has erected on the land comprised therein a messuage or dwelling-house with offices and outbuildings: AND WHEREAS (*Here recite a lease of other parcels to the said A. B. at the yearly rent of* £——, *&c.*): AND WHEREAS the said A. B. hath agreed to sell to the said C. D. the premises comprised in the hereinbefore recited indentures of lease, and the buildings thereon, for all the unexpired residue of the said several terms of years respectively, subject to the rents and lessee's covenants thereby and therein respectively reserved and contained, at the price of £——: NOW THIS INDENTURE WITNESSETH, that in consideraion of the sum of £—— to the said A. B. paid by the said C. D. on or before the execution of these presents (*the receipt, &c.*), THE said A. B., as beneficial owner, hereby assigns unto the said C. D., ALL the hereditaments and premises comprised in and demised by the hereinbefore recited indentures of lease respectively, or expressed so to be, including all buildings which since the date of the said respective indentures of lease have been erected on the land comprised therein, or on any part thereof respectively; TO HOLD the same unto the said C. D., for all the residue now unexpired of the said several terms of years for which the said hereditaments and premises were granted by the said indentures of lease respectively as aforesaid, at the said several rents reserved by the said indentures of lease respectively, and subject to the covenants and conditions in the same indentures respectively

ASSIGNMENT OF PROPERTY COMPRISED IN SEVERAL LEASES.

Recite one indenture of lease.

Another indenture of lease.

That lessee has erected a messuage and other buildings on land comprised in last lease.

Agreement for sale of hereditaments comprised in before-mentioned leases.

Witnessing part.

Consideration.

Vendor assigns hereditaments comprised in recited leases

to purchaser for residue of several terms.

ASSIGNMENT OF PROPERTY COMPRISED IN SEVERAL LEASES.

Covenant by purchaser to pay rent and perform covenants, and to indemnify vendor therefrom.

contained, and which henceforth on the part of the lessee, ought to be observed and performed: And the said C. D. hereby covenants with the said A. B., that the said C. D., his executors, administrators, and assigns, will during the said terms respectively, pay the rents respectively reserved by the said respective indentures of lease, and observe and perform the covenants and conditions therein respectively contained and which henceforth on the lessee's part ought to be observed and performed, and will keep indemnified the said A. B. and his estate and effects from and against all claims and demands for or on account thereof respectively.

In witness, &c.

No. XIV.

ASSIGNMENT *of* Leaseholds *by* Executors.

ASSIGNMENT OF LEASEHOLDS BY EXECUTORS.

Parties.

Recite indenture of lease.

Will of lessee appointing vendors executors.

Death of testator and probate of his will.

Agreement for sale.

THIS INDENTURE, made the —— day of ——, Between A. B., of, &c., and C. D., of, &c. (*executors*), of the one part, and E. F., of, &c. (*purchaser*), of the other part: Whereas by an indenture of lease dated the —— day of ——, and made between G. H. of the one part, and L. M. of the other part, All, &c. (*parcels as described in the lease*), were demised by the said G. H. unto the said L. M., his executors, administrators, and assigns, from the —— day of —— then last past for the term of —— years at the yearly rent of £——, and subject to the covenants and conditions in the said indenture of lease contained, and on the part of the lessee to be observed and performed: And whereas the said L. M. died on the —— day of ——, having duly made his will, dated the —— day of ——, and thereby appointed the said A. B. and C. D. executors thereof, who duly proved the same, on the —— day of ——, in the Principal Probate Registry of the High Court of Justice [*or, as the case may be*, "in the Probate Registry at —— of the High Court of Justice"]: And whereas the said A. B. and C. D. have agreed to sell to the said E. F. the

premises comprised in the hereinbefore recited indenture of lease for the residue of the said term of —— years, subject to the said rent, covenants, and conditions, at the price of £——: NOW THIS INDENTURE WITNESSETH, that in consideration of the sum of £—— paid by the said E. F. to the said A. B. and C. D. as the personal representatives of the said L. M. deceased (*the receipt, &c.*), the said A. B. and C. D. as such personal representatives as aforesaid hereby assign unto the said E. F., ALL the hereditaments and premises comprised in and demised by the hereinbefore recited indenture of lease: TO HOLD the same unto the said E. F., for all the residue now unexpired of the said term of —— years, at the rent reserved by the said indenture of lease, and subject to the covenants and conditions in the same indenture contained, and which henceforth on the part of the lessee, ought to be observed and performed: AND THE SAID E. F. hereby covenants with the said A. B. and C. D. that the said E. F., his executors, administrators, and assigns, will during the said term pay the rent reserved by the said indenture of lease, and observe and perform the covenants and conditions therein contained, and which henceforth on the lessee's part ought to be observed and performed, and will keep indemnified the said A. B. and C. D., and each of them, and the estate and effects of the said L. M., deceased, from and against all claims and demands for or on account thereof.

ASSIGNMENT OF LEASEHOLDS BY EXECUTORS.

Witnessing part.

Vendors as executors assign premises comprised in lease,

to purchaser for remainder of term.

Covenant by purchaser to pay rent and observe covenants in lease.

IN WITNESS, &c.

No. XV.

ASSIGNMENT *of a Portion of* LEASEHOLD PREMISES *which are held under one* LEASE *at an entire* RENT, *the* RENT *being apportioned between the* VENDOR *and* PURCHASER *by mutual arrangement;* CROSS POWERS OF DISTRESS AND ENTRY *in case either makes default in the payment and observance of his proportion of the* RENT *and* COVENANTS.

ASSIGNMENT OF PART OF LEASEHOLDS WHERE RENT IS APPORTIONED

THIS INDENTURE, made the —— day of ——, BETWEEN A. B., of, &c. (*vendor*), of the one part, and C. D., of, &c. (*pur-*

Parties.

ASSIGNMENT OF PART OF LEASEHOLDS WHERE RENT IS APPORTIONED.

chaser), of the other part (*Recite lease to E. F. for seventy-eight years at yearly rent of £12, setting out the parcels as in the lease,—also assignment of lease by E. F. to A. B. for residue of term*): AND WHEREAS the said A. B. hath agreed to sell to the said C. D. the hereditaments intended to be hereby assigned (being part of the hereditaments demised by the hereinbefore recited indenture of lease), for the residue of the said term of seventy-eight years, at the price of £——: AND WHEREAS upon the treaty for the said sale it was agreed that the said C. D. should pay the yearly rent of £6 in respect of the hereditaments intended to be hereby assigned as his proportion of the said yearly rent of £12, and that the residue of the said yearly rent of £12 should be paid by the said A. B. in respect of the said demised premises not intended to be hereby assigned, and that the said parties respectively should enter into the several covenants hereinafter contained: NOW THIS INDENTURE WITNESSETH, that in consideration, &c. (*the receipt, &c.*), THE said A. B., as beneficial owner, hereby assigns unto the said C. D., ALL, &c. (*here set out the particular parcels which are agreed to be sold*); TO HOLD the same unto the said C. D., for all the residue now unexpired of the said term of seventy-eight years, subject to the payment of the yearly rent of £6 (being one moiety of the said rent of £12 reserved by the said recited indenture of lease), at the times, and in the manner appointed by the said indenture of lease for the payment of the whole rent thereby reserved, and subject to the covenants and conditions in the said indenture of lease contained, and on the part of the lessee, to be observed and performed so far only as the same relate to the premises hereby assigned: AND THE SAID C. D. hereby covenants with the said A. B. that the said C. D., his executors, administrators, and assigns, will at all times hereafter during the said term pay the said yearly rent of £6, part of the said yearly rent of £12 reserved by the said indenture of lease, and observe and perform all the covenants and conditions in the said indenture of lease contained, and which henceforth on the part of the lessee, ought to be observed and performed, so far as the same relate to the said premises hereby assigned, and will at all times hereafter keep indemnified the said A. B., his executors, administrators, and assigns, and his and their estate and effects, from the payment of the said rent of £6, and the observance and performance

Recite lease and assignment.

Agreement for sale of part of premises comprised in lease.

Agreement between vendor and purchaser as to the apportionment of the rent.

Witnessing part.

Consideration.

Assignment by vendor of part of premises comprised in lease to purchaser for residue of term at apportioned rent.

Covenant by purchaser for payment and observance of his proportion of rent and covenants.

of the said covenants and conditions relating to the said hereby assigned premises, and from all claims and demands on account of the same, or in anywise relating thereto: AND ALSO THAT IN CASE the said A. B., his executors, administrators, or assigns, shall at any time or times hereafter pay any sum or sums of money, or sustain or incur any damages or expenses for or on account of the said yearly rent of £6, covenants and conditions hereinbefore covenanted to be paid, observed, and performed by the said C. D. as aforesaid, or any of them, then and in every such case, and so often as the same shall happen, it shall be lawful for the said A. B., his executors, administrators, or assigns, to recover the same by distraining upon the premises hereby assigned, in like manner as landlords may distrain for rents reserved upon leases for years: AND ALSO (by way of additional remedy) to enter into and upon, and to hold all or any part of the premises hereby assigned, and to receive and take the rents and profits thereof for his and their own use until he or they shall thereby or otherwise be fully paid and satisfied all and every such sum or sums of money, damages, and expenses as aforesaid: AND THE SAID A. B. hereby covenants with the said C. D. THAT the said A. B., his executors, administrators, or assigns, will at all times during the said term pay the yearly rent of £6 (the residue of the said yearly rent of £12 reserved by the said indenture of lease), and observe and perform all the covenants and conditions in the said indenture of lease contained, and which henceforth, on the part of the lessee ought to be observed and performed, so far as the same relate to the premises comprised in the said indenture of lease which are not hereby assigned, and will at all times hereafter keep indemnified the said C. D., his executors, administrators, and assigns, and his and their estate and effects, from the payment of the said rent of £6, and the performance of the said covenants and conditions relating to the last-mentioned premises, and from all claims and demands whatsoever, on account of the same or in anywise relating thereto: AND ALSO THAT IN CASE the said C. D., his executors, administrators, or assigns, shall at any time or times hereafter pay, sustain, or incur any sum or sums of money, damages, or expenses for or on account of the said yearly rent of £6, covenants and conditions hereinbefore covenanted to be paid, observed, and performed by the said

ASSIGNMENT OF PART OF LEASEHOLDS WHERE RENT IS APPORTIONED.

Powers of distress and entry in respect of premises assigned, if default is made by purchaser, in payment and observance of his proportion of rent and covenants.

Covenants by vendor for title, and for payment and observance of his proportion of rent and covenants.

Powers of distress and entry in respect of premises not assigned if default is made by vendor in payment

ASSIGNMENT OF PART OF LEASEHOLDS WHERE RENT IS APPORTIONED.

A. B. as aforesaid, or any of them, then and in every such case, and so often as the same shall happen, it shall be lawful for the said C. D., his executors, administrators, or assigns, to recover the same by distraining upon such part of the premises comprised in the said recited indenture of lease as is not assigned by these presents, in like manner as landlords may distrain for rents reserved upon leases for years: And also (by way of additional remedy) to enter into and upon, and to hold all or any part of the last-mentioned premises, and receive and take the rents and profits thereof for his and their own use, until he or they shall thereby or otherwise be fully paid and satisfied all and every such sum or sums of money, damages, and expenses as aforesaid.

and observance of his proportion of rent and covenants.

In witness, &c.

No. XVI.

ASSIGNMENT OF PART OF LEASEHOLDS WHERE REMAINING PART IS SOLD TO ANOTHER PURCHASER.

ASSIGNMENT *to a* Purchaser *of part of* Leasehold *premises held under* one Lease, *where the* remaining *part is sold at the same time to* Another Purchaser *and the* Rent *is* Apportioned *between the two. The* Purchaser *of the* Remaining *part of the property joins in the* Assignment. *The latter* covenants *to pay his* proportion *of the* Rent, *and to observe the* Covenants *in the lease as regards the* property purchased *by him, and confers* Powers *of* Distress *and* Entry *to secure the same.*

Parties.

THIS INDENTURE, made the —— day of ——, Between A. B., of, &c. (*vendor*), of the first part, E. F., of, &c. (*purchaser of the remaining part*), of the second part, and C. D., of, &c. (*purchaser*), of the third part (*Recite lease*): And

Recite agreement for sale.

whereas the said A. B. has agreed to sell to the said C. D. the messuage and hereditaments intended to be hereby assigned (being part of the premises comprised in the said indenture of

lease) for the residue of the said term, subject to the apportioned rent of £6, at the price of £——. Now, &c. (*assignment to purchaser; covenants by C. D. with A. B. to pay rent and observe covenants in lease as regards the premises assigned as in last Precedent, suprà*, pp. 244, 245). And whereas the said A. B. has sold the remainder of the premises comprised in the said indenture of lease to the said E. F., subject to the payment of the yearly rent of £——, being the remainder of the said rent reserved by the said indenture of lease, and the same has been or is intended to be assigned to the said E. F. by an indenture bearing even date with these presents, and made between the said A. B. of the first part, the said C. D. of the second part, and the said E. F. of the third part: And whereas it has been agreed that the said E. F. shall enter into the covenants and confer such powers of distress and entry as are hereinafter expressed: AND THIS INDENTURE ALSO WITNESSETH that in pursuance of the said agreement in this behalf, and in consideration of the premises, the said E. F. hereby covenants with the said C. D. (*a*), that, &c. (*covenant to pay proportion of rent, and observe covenants in lease, and power of distress and entry, the same as the covenants by vendor and the powers following the same in the last Precedent, suprà*, pp. 245, 246, *substituting throughout* "*E. F.*" *for* "*A. B.*," *and the words* "so far as the same relate to the premises assigned to the said E. F. by the said indenture bearing even date herewith," *for the words* "so far as the same relate to the premises comprised in the said indenture of lease which are not hereby assigned.")

In witness, &c.

ASSIGNMENT OF PART OF LEASEHOLDS WHERE REMAINING PART IS SOLD TO ANOTHER PURCHASER.

Assignment to purchaser at apportioned rent.

Recite that vendor has sold remaining part of premises comprised in lease to E. F.

Agreement that E. F. should enter into covenants with and confer powers of distress and entry.

Covenants by E. F. and powers of distress and entry accordingly.

(*a*) The 58th section of the Conveyancing Act, 1881, provides that a covenant relating to land not of inheritance shall be deemed to be made with the covenantee, his executors, administrators, and assigns, and shall have effect as if executors, administrators, and assigns were expressed.

No. XVII.

CONVEYANCE OF A LEASEHOLD ESTATE FOR LIVES.

CONVEYANCE *of a* LEASEHOLD ESTATE *for* LIVES (*a*).

Parties.

THIS INDENTURE, made, &c., BETWEEN A. B., of, &c. (*vendor*), of the one part, and C. D., of, &c. (*purchaser*), of the other part: WHEREAS by an indenture dated the —— day of ——, and made between G. H., of the one part,

Recite lease for lives.

and the said C. D., of the other part, ALL, &c. (*here set out the parcels as described in the lease*), were granted by the said G. H. unto the said A. B., his executors, administrators, and assigns, for the lives of —— and ——, and the life of the survivor of them, at the yearly rent of £5, and subject to the covenants and conditions therein contained, and on the part of the grantee, his executors, administrators, and assigns, to be

Agreement for sale of lease.

observed and performed: AND WHEREAS the said A. B. hath agreed to sell to the said C. D. the hereditaments and premises comprised in the said recited indenture, for the lives and subject as aforesaid, at the price of £——: NOW THIS INDENTURE WITNESSETH, that in consideration of the sum of £—— to the said A. B. paid by the said C. D. (the receipt whereof the said A. B. hereby acknowledges), the said A. B., as beneficial

Grant of parcels

owner, hereby conveys unto the said C. D., ALL the hereditaments and premises comprised in and granted by the said recited

to purchaser for lives of cestuis que vie.

indenture: TO HOLD the same unto the said C. D. for the lives of the said —— and ——, and the life of the survivor of them,

Estates pour autre vie.

(*a*) An estate *pour autre vie* may be limited by the original grant, or by any subsequent assurance thereof, *either* to the grantee and his heirs, in which case on his death intestate the heir will take as special occupant and the property will be chargeable in his hands as assets by descent, as in the case of freehold land in fee-simple; *or* to the grantee, his executors and administrators, in which case the executor or administrator will take by special occupancy, or to the grantee without any words of limitation, in which case it goes to the executor or administrator by virtue of the Wills Act, 1 Vict. c. 26, s. 6, and an estate *pour autre vie* coming to an executor or administrator by reason of a special occupancy or otherwise, is made assets in his hands, to be applied in the same manner as the personal estate of the testator or intestate. If an estate *pour autre vie*, either by the original grant or by any subsequent assurance thereof, is limited to the grantee, his *heirs, executors, and administrators*, the *heir*, and not the executor, will take as special occupant. (Atkinson *v.* Baker, 4 T. R. 229.)

at the rent and subject to the covenants and conditions reserved by and contained in the said recited indenture, and on the part of the grantee, to be paid, observed, and performed: AND THE SAID C. D. hereby covenants with the said A. B., that the said C. D., his executors, administrators, or assigns, will during the residue of the said term determinable as aforesaid pay the rent reserved by the said indenture of lease and observe and perform the covenants and conditions therein contained, and which henceforth on the grantee's part ought to be observed and performed, and will keep indemnified the said A. B., and his estate and effects, from and against all claims and demands for or on account of the same.

CONVEYANCE OF A LEASEHOLD ESTATE FOR LIVES.

Covenant by purchaser to pay rent and perform covenants, and indemnify vendor therefrom.

IN WITNESS, &c.

No. XVIII.

ASSIGNMENT *of* LEASEHOLDS *for the residue of a* TERM DETERMINABLE *on* LIVES, *and of the benefit of a* COVENANT *for* PERPETUAL RENEWAL.

ASSIGNMENT OF LEASEHOLDS AND OF COVENANT FOR RENEWAL.

THIS INDENTURE, made the —— day of ——, BETWEEN A. B., of, &c. (*vendor*), of the one part, and C. D., of, &c. (*purchaser*), of the other part: WHEREAS, by an indenture, dated, &c., and made between X. Y., of the one part, and the said A. B., of the other part (*here recite lease of premises hereinafter demised for* 99 *years, from the —— day of ——, if E., F., and G., or any of them should so long live, and the covenant for renewal contained in the lease. — Death of E.*) — AND WHEREAS, by an indenture, dated the —— day of ——, and made between the said X. Y., of the one part, and the said A. B., of the other part, in pursuance of the aforesaid covenant and in consideration of the surrender of the said recited lease, and in consideration of the sum of £——, to the said X. Y., paid by the said A. B., the said X. Y. demised unto the said A. B., ALL (*here describe the parcels as set forth in this lease*), to hold the same unto the said A. B., his executors, administrators, and assigns, for the term of 99 years, from the —— day of ——, if

Parties.

Recite lease to vendor for a term determinable on lives,

ASSIGNMENT OF LEASEHOLDS AND OF COVENANT FOR RENEWAL.

with covenant for perpetual renewal.

F. and the said G. and H., or any of them, should so long live, at the yearly rent of £——, and under the covenants and conditions in the said indenture of lease now in recital contained, and on the lessee's part to be observed and performed, And by the indenture now in recital, the said X. Y. covenanted for himself, his heirs, executors, administrators, and assigns, with the said A. B., his executors, administrators, and assigns, that in case of the decease of such one of them the said F., G., and H., as should first die, the said A. B., his executors, administrators, or assigns, should within six calendar months from the dropping of such life give to the said X. Y., his heirs or assigns, or leave at his or their usual or last known place of abode, a notice in writing, requesting a new lease of the premises for 99 years if such two of them the said F., G., and H., as should be then living, and one other person to be nominated in that behalf by the person or persons giving or leaving such notice, or any of them should so long live, and should within the said period pay the sum of £—— to the said X. Y., his heirs or assigns, by way of fine, for the renewal of such lease, then and in such case the said X. Y., his heirs or assigns, would within such period as aforesaid, at the request and cost of the said A. B., his executors, administrators, or assigns, grant unto him or them on the surrender of the lease now in recital, a new lease of the said premises for and determinable on the lives aforesaid according to such notice upon the same terms and under and subject to the same covenants, provisoes, and declarations as were contained in the lease now in recital, including the covenant for renewal:

Agreement for sale.

And whereas the said A. B. hath agreed with the said C. D., for the sale to him of the premises comprised in the said recited indenture of lease of the —— day of ——, for the residue of the said term of 99 years created therein by the same indenture as aforesaid, and also of the full benefit of the covenant in the same indenture contained for securing the perpetual renewal of the said lease on the dropping of lives as aforesaid, subject to the said rent and covenants, at the price of £——: NOW THIS INDENTURE WITNESSETH, that in consideration of the sum of £——, to the said A. B. paid by the said C. D. &c. (*the receipt, &c.*) the said A. B., as beneficial owner, hereby assigns unto the said C. D., All the messuages and premises comprised in and demised by the said recited indenture of

Consideration.

Vendor assigns.

First.

Leasehold premises.

the —— day of ——: TOGETHER with the full benefit and advantage of the covenant contained in the said last-mentioned indenture for securing the perpetual renewal of the said lease on the dropping of lives as therein recited: TO HOLD the same unto the said C. D., for all the residue now unexpired of the said term of 99 years created therein by the said last-mentioned indenture, determinable as aforesaid, and for all other the estate and interest therein of the said A. B., at the said yearly rent of £——, and subject to the covenants and conditions in the same indenture contained, and on the lessee's part to be observed and performed. AND THE SAID C. D. hereby covenants with the said A. B., that the said C. D., his executors, administrators, and assigns, will during the said term determinable as aforesaid pay the yearly rent reserved by the said indenture, and observe and perform the covenants and conditions therein contained and on the lessee's part to be observed and performed, and will keep indemnified the said A. B., and his estate and effects, from all claims and demands for or on account thereof.

ASSIGNMENT OF LEASEHOLDS AND OF COVENANT FOR RENEWAL.

Secondly. Benefit of covenant for renewal.

To hold premises first assigned to purchaser for remainder of term determinable on the lives,

and benefit of covenant for renewal to purchaser absolutely.

Covenant by purchaser to pay rent and perform covenants, and keep vendor indemnified therefrom.

IN WITNESS, &c.

No. XIX.

CONVEYANCE *of* FREEHOLDS *and* COVENANT *for the* SURRENDER *of* COPYHOLDS.

CONVEYANCE OF FREEHOLDS AND COVENANT TO SURRENDER COPYHOLDS.

THIS INDENTURE, made, &c., BETWEEN A. B., of, &c. (*vendor*), of the one part, and C. D., of, &c. (*purchaser*), of the other part: WITNESSETH, that in consideration, &c. (*the receipt, &c.*), (*Conveyance of freeholds to C. D., in fee simple, suprà*, p. 225): AND THIS INDENTURE ALSO WITNESSETH that for the consideration aforesaid (*Covenant for the surrender of the copyhold hereditaments to the use of C. D., in customary fee-simple, suprà*, p. 235): AND IT IS HEREBY DECLARED, that for the purpose of the Stamp Act the sum of £——, part of the said purchase-money, shall be considered the price of the said

Parties.

Declaration as to apportionment of purchase-money for

CONVEYANCE OF FREEHOLDS AND COVENANT TO SURRENDER COPYHOLDS.

freehold hereditaments, and the sum of £——, being the remainder of the said purchase-money, the price of the said copyhold hereditaments.

IN WITNESS, &c.

purpose of Stamp Act.

No. XX.

CONVEYANCE OF FREEHOLDS AND LEASEHOLDS.

CONVEYANCE *of* FREEHOLDS *and* ASSIGNMENT *of* LEASEHOLDS.

Parties.

THIS INDENTURE, made the —— day of ——, BETWEEN A. B., of, &c. (*vendor*), of the one part, and C. D., of, &c. (*purchaser*), of the other part;

Recite lease.

WHEREAS (*Recite lease to A. B.*—*see suprà*, p. 237):

Agreement for sale.

AND WHEREAS the said A. B. has agreed to sell to the said C. D. the freehold hereditaments hereinafter described and also the said leasehold premises, subject to the said rent, covenants and conditions, at the price of £——:

First witnessing part.

NOW THIS INDENTURE WITNESSETH, that in consideration, &c. (*the receipt, &c.*),

Conveyance of freeholds.

THE said A. B., as beneficial owner, hereby conveys unto the said C. D., ALL, &c. (*parcels*): TO HOLD the same unto and to the use of the said C. D., in fee simple:

Second witnessing part.

AND THIS INDENTURE ALSO WITNESSETH, that for the consideration aforesaid,

Assignment of leaseholds.

THE said A. B., as beneficial owner, hereby assigns unto the said C. D., ALL the hereditaments and premises comprised in and demised by the hereinbefore recited indenture of lease of the —— day of ——: TO HOLD the same unto the said C. D., for all the residue now unexpired of the said term of —— years, at the rent and subject to the covenants and conditions by and in the said indenture of lease reserved and contained, and which henceforth on the part of the lessee, are or ought to be paid, observed, and performed. (*Covenant by purchaser to pay rent and perform covenants, and indemnify vendor therefrom; suprà*, p. 238.)

IN WITNESS, &c.

No. XXI.

CONVEYANCE *of* FREEHOLDS, COVENANT *to* SURRENDER COPYHOLDS, *and* ASSIGNMENT *of* LEASEHOLDS, *the* PURCHASER *having* MARRIED BEFORE 1834.

CONVEYANCE OF FREEHOLDS, COVENANT TO SURRENDER COPYHOLDS, AND ASSIGNMENT OF LEASEHOLDS.

THIS INDENTURE, made the —— day of ——, BETWEEN A. B., of, &c. (*vendor*), of the first part, C. D., of, &c. (*purchaser*), of the second part, and E. F., of, &c. (*dower trustee*), of the third part (*Recite lease suprà*, p. 237): AND WHEREAS the said A. B. has agreed to sell to the said C. D. the freehold and copyhold hereditaments hereinafter described and also the said leasehold premises, subject to the said rent, covenants and conditions, at the price of £——: NOW THIS INDENTURE WITNESSETH that in consideration of the sum of £3000, as purchase-money, paid by the said C. D. to the said A. B. (*the receipt, &c.*), THE said A. B., as beneficial owner, hereby conveys unto the said C. D. ALL (*parcels*): TO HOLD the same unto the said C. D. in fee simple: TO SUCH uses, &c. (*Uses to bar dower, see suprà*, p. 231): AND THIS INDENTURE ALSO WITNESSETH, that for the consideration aforesaid (*Covenant by A. B. for the surrender of the copyholds to the use of C. D., in customary fee simple; see suprà*, p. 235): AND THIS INDENTURE ALSO WITNESSETH, that for the consideration aforesaid (*Assignment of leaseholds to C. D.; see suprà*, p. 237). (*Covenant by purchaser to pay rent and observe covenants, and indemnify vendor therefrom, suprà*, p. 238): AND IT IS HEREBY DECLARED, that for the purpose of the Stamp Act the sum of £2000, part of the said purchase-money, shall be considered the price of the said freehold and leasehold premises, and the sum of £1000, the remainder of the said purchase-money, the price of the said copyhold premises.

Parties.

Recite lease.

Agreement for sale.

Vendor conveys freeholds,

to uses to bar dower in favour of purchaser.

Vendor covenants to surrender copyholds to purchaser.

Vendor assigns leaseholds to purchaser.

Apportionment of purchase-money for purpose of Stamp Act.

IN WITNESS, &c.

No. XXII.

CONVEYANCE OF WIFE'S FREEHOLDS.

CONVEYANCE *by a* HUSBAND *and* WIFE *married before the 1st January*, 1883, *of* FREEHOLDS *of the* WIFE (*a*).

Parties.

THIS INDENTURE, made the —— day of ——, BETWEEN A. B., of, &c., and C. his wife (*vendors*), of the one part, and E. F., of, &c. (*purchaser*), of the other part: WHEREAS X. Y., late of, &c., died on the —— day of ——, having made his will, dated the —— day of ——, whereby he devised the hereditaments hereinafter described unto the said C. B. in fee simple: AND WHEREAS the said A. B. and C. his wife, have agreed to sell to the said E. F. the said hereditaments at the price of £——: NOW THIS INDENTURE WITNESSETH, that in consideration of the sum of £—— to the said A. B. and C. his wife paid by the said E. F. on or before the execution of these presents (*the receipt, &c.*), THE said A. B. and C. his wife as beneficial owners (*b*), do and each of them doth by this deed duly acknowledged by the said C. B. pursuant to the statute in that behalf, convey unto the said E. F. ALL, &c. (*parcels*): TO HOLD the same unto and to the use of the said E. F. in fee simple.

Recite will devising hereditaments to wife.

Agreement for sale by husband and wife

Conveyance by husband and wife,

to purchaser.

IN WITNESS, &c.

No. XXIII.

CONVEYANCE BY MARRIED WOMAN UNDER POWER.

CONVEYANCE *by a* MARRIED WOMAN *under a* POWER (*c*).

Parties.

THIS INDENTURE, made the —— day of ——, BETWEEN C. B., the wife of A. B., of, &c. (*appointor*), of the one part,

(*a*) This deed must be acknowledged by the wife pursuant to the 3 & 4 Will. 4, c. 74.

(*b*) See sect. 7 (sub-sect. 3) of the Conveyancing Act, 1881.

(*c*) This deed need not be acknowledged by the appointor, nor can the concurrence of the husband be required.

and E. F., of, &c. (*appointee*), of the other part (*Recite will of X. Y., whereby the lands were devised to such uses as C. B. should, notwithstanding coverture, appoint, and in default of appointment to the uses therein mentioned,—death of testator, and probate of his will,—agreement by C. B. with E. F. for sale*): NOW THIS INDENTURE WITNESSETH, that in consideration of the sum of £—— to the said C. B. paid by the said E. F. on or before the execution of these presents (*the receipt, &c.*) the said C. B., as beneficial owner, in exercise of the power for this purpose given to her by the said will of the said X. Y. as aforesaid, and of all other powers (if any) her hereunto enabling, DOTH by this deed, sealed and delivered by her in the presence of and attested by the two persons whose names are intended to be hereupon endorsed as witnesses to such sealing and delivery, appoint, that ALL, &c. (*parcels*), shall henceforth, go, remain, and be TO THE USE of the said E. F. in fee simple.

CONVEYANCE BY MARRIED WOMAN UNDER POWER.

Recite will, and agreement for sale.

Witnessing part.

Consideration.

Wife appoints

parcels

to purchaser in fee.

No. XXIV.

CONVEYANCE *of* FREEHOLDS, *or* COVENANT *to* SURRENDER COPYHOLDS, *or* ASSIGNMENT *of* LEASEHOLDS *by a* WOMAN MARRIED *after the* 31*st December*, 1882 (*a*).

CONVEYANCE, &c., BY A WOMAN MARRIED AFTER THE 31ST OF DECEMBER, 1882.

THIS INDENTURE, made the —— day of ——, BETWEEN A. B., the wife of H. B., of, &c., to whom she was married since the 31st day of December 1882 (*vendor*), of the one part, and C. D., of, &c. (*purchaser*), of the other part (*b*), WITNESSETH, that in consideration of the sum of £—— to the said A. B. paid by the said C. D. on or before the execution of these presents, (the receipt whereof the said A. B. hereby acknowledges,) the said

Parties.

Married woman conveys parcels.

(*a*) See the Married Women's Property Act, 1882, secs. 2 and 5, and *suprà*, p. 187. Where the marriage was before the 1st of January, 1883, and the wife has acquired the property since the 31st of December 1882, the date of the marriage will be omitted in the description of the vendor, and recitals will be introduced showing the acquisition of the property since the 31st of December, 1882. Under this precedent the vendor conveying as beneficial owner will be liable to the statutory covenants for title, in respect of her separate property.

When marriage was before 1883 and property was acquired by wife afterwards.

(*b*) If the property is leasehold the lease and agreement for sale will be recited as in Precedent No. XI., *suprà*, p. 237.

CONVEYANCE, &C., BY A WOMAN MARRIED AFTER 31ST OF DECEMBER, 1882.

A. B., as beneficial owner (*a*), (*the same as Precedent No.* I., *suprà*, p. 225 as to freeholds, *or No.* IX., *suprà*, p. 235 as to copyholds, *or No.* XI., *suprà*, p. 237 as to leaseholds, *substituting "she" for "he," and "her" for "him," when necessary*).

IN WITNESS, &c.

No. XXV.

SURRENDER OF COPYHOLDS WHERE VENDOR IS A WOMAN MARRIED BEFORE 1ST JANUARY, 1883.

SURRENDER *out of* COURT *of* COPYHOLDS, *where the* VENDOR *is a* MARRIED WOMAN, *and the Marriage has taken place before* 1*st* JANUARY, 1883.

The Manor of ——, in the county of —— } BE IT REMEMBERED, that on this —— day of ——, A. B., of, &c., and C., his wife (*vendors*), come before L. M., &c., steward of the manor out of court, and in consideration of the sum of £—— to them paid by E. F., of, &c. (*purchaser*), surrender into the hands of the lord of the manor by the hands and acceptance of his said steward, according to the custom of the manor, (the said C. B. having been first examined by the said steward separately and apart from her said husband, and freely and voluntarily consenting hereto) (*b*), ALL, &c. (*parcels*), [to which said hereditaments and premises the said C. D. was admitted tenant at a court holden for the manor on the —— day of ——], To the use of the said E. F., his heirs and assigns for ever, at the will of the lord, according to the custom of the manor, by and under the rents, suits and services therefor due and of right accustomed.

Surrender of copyholds by husband and wife.

To purchaser in fee.

This surrender was taken and accepted
the day and year above written by me,

(Signed) L. M. (*Steward*),
Steward of the Manor.

Covenants by married woman after 31st December, 1882.

(*a*) Every covenant, whether express or implied, which is entered into by a married woman after the 31st December, 1882, is deemed to be entered into by her with respect to and so as to bind her present and after-acquired separate property, and she may be sued thereupon accordingly as if she were a *feme sole* (Married Women's Property Act, 1882, secs. 1, 13). The covenant does not operate as an immediate specific charge on her separate estate, but it places the covenantee in a position to bring an action thereunder on the occasion of any breach, and obtain a decree under which the separate estate may be attached.

(*b*) A surrender of copyholds by a married woman is void unless she is

No. XXVI.

SURRENDER *of* COPYHOLDS *to a* PURCHASER *by a* WOMAN MARRIED *since the 31st of December*, 1882 (*a*).

SURRENDER BY WOMAN MARRIED SINCE 1882.

Manor of } BE IT REMEMBERED, that on the —— day of ——. } ——, 18—, A. B., the wife of H. B., of, &c., to whom she was married since the 31st day of December, 1882, comes, &c. (*same as Precedent, No. X., suprà*, p. 236, *substituting "her" for "his" and "him."*)

No. XXVII.

CONVEYANCE *of* FREEHOLDS *to a* MARRIED WOMAN *who has* PURCHASED *the same out of* MONEYS *to which she is* ENTITLED *for her* SEPARATE USE.

CONVEYANCE OF FREEHOLDS WHEN MARRIED WOMAN HAS PURCHASED SAME OUT OF SEPARATE ESTATE.

THIS INDENTURE, made the —— day of ——, BETWEEN A. B., of, &c. (*vendor*), of the one part, and C. D., wife of E. D., of, &c. (*purchaser*), of the other part, WITNESSETH, that in consideration of the sum of £—— to the said A. B. paid by the said C. D. out of her separate property on or before the execution of these presents (the receipt whereof the said A. B. hereby acknowledges,) the said A. B., as beneficial owner, hereby conveys unto the said C. D. ALL, &c. (*parcels*): TO HOLD the same unto and to the use of the said C. D. in fee simple (*b*).

Parties.

In consideration of monies paid by married woman out of her separate estate.

Vendor conveys freeholds to her in fee simple.

IN WITNESS, &c.

privately examined by the lord or his steward as to her voluntary consent. (Serv. Cop. p. 107.)

(*a*) As the married woman is entitled for her separate use under the Married Women's Property Act, 1882, she can surrender without the concurrence of her husband and without any separate examination.

(*b*) Since the 31st of December, 1882, the conveyance of freeholds to a married woman can be properly taken in this form, whether she was married before 1883 or since, and whether the separate money with which the purchase has been made has been acquired under the Married Women's Property Act, 1882, or otherwise. See *suprà*, p. 187.

XXVIII.

CONVEYANCE BY A WIFE TO HER HUSBAND.

CONVEYANCE *of a* FREEHOLD ESTATE *by a* MARRIED WOMAN *to her* HUSBAND, *the* PROPERTY *having been acquired and the* MARRIAGE *having taken place before* 1883 (*a*).

Parties. THIS INDENTURE, made the —— day of ——, BETWEEN C. B., the wife of A. B., of, &c., of the one part, and the said A. B. of the

Recite lease. other part: WHEREAS by an indenture dated, &c., and made, &c., the hereditaments hereinafter described were duly conveyed unto

Death of lessee, leaving vendor, his only child. and to the use of L. M. in fee simple: AND WHEREAS the said L. M. died on the —— day of ——, 1865 (*b*), intestate, leaving the said C. B., his daughter and only child, his sole heiress-at-law: AND WHEREAS the said C. B. was married to the said A. B. before the 1st day of January, 1883: AND WHEREAS the said C. B. is desirous of conveying the said hereditaments unto the said A. B., so that henceforth the same may be held by him for his absolute use and benefit in fee simple: NOW THIS INDENTURE WITNESSETH that for effectuating the said desire the said C. B., by this deed duly acknowledged by her pursuant to the statute in that behalf, hereby, with the concurrence of the said A. B., conveys unto the said A. B., ALL, &c. (*parcels*), TO HOLD the same unto and to the use of the said A. B. in fee simple (*c*).

IN WITNESS, &c.

No. XXIX.

CONVEYANCE BY A MARRIED WOMAN AND HER TRUSTEE BY HER DIRECTION.

CONVEYANCE *of* FREEHOLDS *by a* MARRIED WOMAN *entitled for her* SEPARATE USE *and by her* TRUSTEE *by her* DIRECTION *as* BENEFICIAL OWNER (*d*).

Parties. THIS INDENTURE, made the —— day of ——, BETWEEN A. B., of, &c. (*trustee*), of the first part, C. D., the wife of G. D.,

(*a*) By the Conveyancing Act, 1881, sect. 50, a wife can now convey freeholds directly to her husband without the intervention of a grantee to uses.

(*b*) This date shows that C. B. could not have become entitled to the property for her separate use under the Married Women's Property Acts.

(*c*) If C. B. had married or acquired the property after the 31st of December, 1882, acknowledgment by her would have been unnecessary.

(*d*) By the Conveyancing Act, 1881, it is provided that where in a conveyance it is expressed that by direction of a person expressed to direct

of, &c. (*vendor*), of the second part, and E. F., of, &c. (*purchaser*), of the third part: WHEREAS G. H., late of, &c., deceased, duly made his will, dated, &c., and thereby devised all his real estate unto and to the use of the said A. B., his heirs and assigns, in trust for his daughter the said C. D., her heirs and assigns, for her separate use, and appointed L. M. and N. O. executors thereof (*death of testator and probate of his will*): AND WHEREAS the messuage and hereditaments hereinafter described form part of the real estate devised by the said will as aforesaid: AND WHEREAS the said C. D. hath agreed to sell to the said E. F. the said messuage and hereditaments at the price of £——: NOW THIS INDENTURE WITNESSETH that in consideration of the sum of £—— to the said C. D. paid by the said E. F. on or before the execution of these presents (*the receipt, &c.*), THE SAID A. B., as trustee, by the direction of the said C. D. hereby conveys, and the said C. D., as beneficial owner, hereby conveys and confirms unto the said E. F. ALL, &c. (*parcels*), TO HOLD the same unto and to the use of the said E. F. in fee simple.

IN WITNESS, &c.

CONVEYANCE BY A MARRIED WOMAN AND HER TRUSTEE BY HER DIRECTION.

Will of G. H. devising his real estate to trustee for her separate use.

Probate of will.

That hereditaments to be conveyed form part of testator's real estate.

Agreement for sale by C. D.

Consideration.

Trustee by direction of C. D. as beneficial owner conveys,

and C. D. conveys and confirms

parcels

to purchaser.

No. XXX.

CONVEYANCE *by a* MORTGAGOR *and* MORTGAGEE *in* FEE, PART *of the* PURCHASE MONEY *being paid to the* MORTGAGEE *in satisfaction of his debt; the* WIFE *of the* MORTGAGOR *joins to release her* DOWER (*a*).

CONVEYANCE BY MORTGAGOR AND MORTGAGEE.

THIS INDENTURE, made the —— day of ——, BETWEEN A. B., of, &c. (*mortgagee*), of the first part, C. D., of, &c. (*vendor*), Parties.

as beneficial owner, another person conveys, then the person giving the direction, whether he conveys and is expressed to convey as beneficial owner or not, shall be deemed to convey and to be expressed to convey as beneficial owner the subject-matter so conveyed by his direction, and that a covenant on his part shall be implied accordingly (sect. 7, sub-sect. 2).

(*a*) The deed must be acknowledged by the wife, pursuant to the Fines and Recoveries Act, in order to bar her right to dower. (See 3 & 4 Wm. 4, c. 74, ss. 77, 79.)

Where a wife, married before the Dower Act, joined with her husband by

CONVEYANCE BY MORTGAGOR AND MORTGAGEE.

and E. D. his wife, of the second part, and G. H., of, &c. (*purchaser*), of the third part: WHEREAS by an indenture dated the —— day of ——, and made between the said C. D. of the one part, and the said A. B. of the other part, the hereditaments hereinafter described were conveyed by the said C. D. unto and to the use of the said A. B., in fee simple, subject to a proviso therein contained for the redemption of the said hereditaments on payment by the said A. B. to the said C. D. of the sum of £2000, with interest thereon on a day now past: AND WHEREAS the said C. D. hath agreed to sell the said hereditaments to the said G. H. at the price of £3000: AND WHEREAS the said sum of £2000 is still due on the security of the hereinbefore recited indenture, but all interest for the same has been paid up to the date of these presents: AND WHEREAS upon the treaty for the said purchase, it was agreed that the said sum of £2000 should be paid to the said A. B. out of the said purchase-money: NOW THIS INDENTURE WITNESSETH, that in consideration of the sum of £2000 to the said A. B. paid by the said G. H. on or before the execution of these presents, by the direction of the said C. D. (the receipt whereof the said A. B. hereby acknowledges), and in consideration of the sum of £1000 to the said C. D. at the same time paid by the said G. H. (the payment and receipt in manner aforesaid of which said sums of £2000 and £1000 making together the sum of £3000 the said C. D. hereby acknowledges), THE said A. B., as mortgagee, by the direction of the said C. D., hereby conveys, and the said C. D., as beneficial owner, hereby conveys, and the said E. D., as beneficial owner by the direction of the said C. D., for the purpose of releasing her dower, hereby releases and conveys unto the said G. H., ALL, &c. (*parcels*): TO HOLD the same unto and to the use of the said G. H., in fee simple, freed and discharged from all principal money and interest secured by and all claims and demands under the hereinbefore recited indenture of mortgage.

Recite mortgage.

Contract for sale.

Sum due upon mortgage,

and agreement for payment of same out of purchase-money.

Witnessing part.

Consideration to mortgagee,

and consideration to vendor.

Conveyance by mortgagor and wife, and mortgagee, of parcels.

Habendum to purchaser in fee.

IN WITNESS, &c.

an acknowledged deed in mortgaging his freehold estate to secure his debt, it was held that the wife's right to dower was extinguished in equity as well as at law, and therefore that she had no interest that would entitle her to redeem. (Dawson *v.* Bank of Whitehaven, 6 C. D. 218.)

No. XXXI.

CONVEYANCE *by the* DEVISEE *of a* MORTGAGOR *and a* MORTGAGEE *in* FEE *to a* PURCHASER (*a*).

CONVEYANCE BY DEVISEE OF MORTGAGOR AND MORTGAGEE.

THIS INDENTURE, made the —— day of ——, BETWEEN A. B., of, &c. (*mortgagee*), of the first part, C. D., of, &c. (*devisee of mortgagor*), of the second part, and E. F., of, &c. (*purchaser*), of the third part (*Recite mortgage by G. H. to A. B.*): AND WHEREAS the said G. H. duly made his will, dated the —— day of ——, 1860, and thereby devised all his real estate to the said C. D., and bequeathed all his personal estate in the manner in the said will mentioned, and appointed the said C. D. sole executor of his said will (*Death of testator and probate of his will. Agreement for sale, sum due on mortgage, and agreement for payment of same out of purchase-money, suprà*, p. 260): NOW THIS INDENTURE WITNESSETH, that in consideration of the sum of £2000 to the said A. B. paid by the said E. F. by the direction of the said C. D., on or before the execution of these presents, (the receipt whereof the said A. B. hereby acknowledges,) and in consideration of the sum of £1000 to the said C. D. at the same time paid by the said E. F., (the payment and receipt in manner aforesaid of which said several sums of £2000 and £1000, making together the sum of £3000, the said C. D. hereby acknowledges,) the said A. B. as mortgagee, by the direction of the said C. D., hereby conveys, and the said C. D., as beneficial owner, hereby conveys unto the said E. F. ALL, &c. (*parcels*): TO HOLD the same unto and to the use of the said E. F. in fee simple, absolutely discharged from all principal money and interest secured by and all claims and demands under the hereinbefore recited indenture of mortgage.

Parties.

Recite will of mortgagor devising his real estate.

Consideration to mortgagee, and consideration to vendor.

Conveyance by the devisee of mortgagor and mortgagee, to purchaser in fee.

IN WITNESS, &c.

(*a*) In the present case as between the mortgaged estate and the other property of the mortgagor, the mortgaged estate is the primary fund for the payment of the debt. (See 17 & 18 Vict. c. 113; 30 & 31 Vict. c. 69.)

No. XXXII.

CONVEYANCE BY MORTGAGOR AND BY MORTGAGEES FOR TERM WHO ARE SATISFIED WITH REMAINING SECURITY.

CONVEYANCE *by a* MORTGAGOR *and* MORTGAGEES *for a* TERM *of* YEARS *to a* PURCHASER *in* FEE—*the* MORTGAGEES *being* SATISFIED *that their* REMAINING SECURITY *is* SUFFICIENT.

Parties.

THIS INDENTURE, made the —— day of ——, BETWEEN A. B., of, &c. (*vendor and mortgagor*), of the first part, C. D., of, &c., and E. F., of, &c. (*mortgagees*), of the second part, and G. H., of, &c. (*purchaser*), of the third part: WHEREAS by an

Recite mortgage for a term.

indenture dated the —— day of ——, and made between the said A. B. of the one part, and the said C. D. and E. F. of the other part, the hereditaments hereinafter described were (with other hereditaments) demised by the said A. B. unto the said C. D. and E. F. for the term of one thousand years, subject to a proviso for the cesser of the said term upon payment by the the said A. B. to the said C. D. of the sum of £—— with interest

Agreement for sale.

thereon on a day now past: AND WHEREAS the said A. B. has agreed to sell the hereditaments hereinafter described to the said G. H. at the price of ——: AND WHEREAS the said C. D. and

That mortgagees are satisfied of sufficiency of remaining security.

E. F., being satisfied that their said mortgage debt is otherwise sufficiently secured, have agreed to join in these presents in the manner hereinafter expressed: NOW THIS INDENTURE

Witnessing part.

WITNESSETH, that in consideration of the sum of £—— to

Consideration.

the said A. B. paid by the said G. H. on or before the execution of these presents (*the receipt, &c.*), the said A. B., as

Mortgagor conveys and mortgagees surrender parcels

beneficial owner, hereby conveys, and the said C. D. and E. F., as mortgagees, by the direction of the said A. B., and to the intent that the said term of one thousand years created by the hereinbefore recited indenture, may, so far as regards the hereditaments intended to be hereby conveyed, be merged and extinguished in the freehold and inheritance of the same, hereby

to purchaser in fee, free from mortgage debt.

surrender unto the said G. H., ALL, &c. (*parcels*): TO HOLD the same unto and to the use of the said G. H., in fee simple, discharged from the said mortgage debt of £——, and all interest for the same, and all claims and demands on account thereof:

Acknowledgment of right to production of deeds.

AND THE SAID C. D. and E. F. hereby acknowledge the right of

the said G. H. to production of the documents of title mentioned in the schedule hereto, which documents are in the possession of the said C. D. and E. F., as mortgagees, and to delivery of copies thereof: And the said A. B. hereby covenants with the said G. H., his heirs and assigns, that so soon as the documents mentioned in the schedule hereto shall come into the possession of the said A. B., his heirs or assigns, he or they will give to the said G. H., his heirs or assigns, an undertaking for their safe custody, and that after the said documents, or any of them, shall have so come into possession as aforesaid, and until such undertaking as aforesaid shall be given, he or they shall be subject to the same obligations in all respects as if such undertaking had been given (*a*).

CONVEYANCE BY MORTGAGOR AND BY MORTGAGEES FOR TERM WHO ARE SATISFIED WITH REMAINING SECURITY.

In witness, &c.

The Schedule above referred to.

No. XXXIII.

CONVEYANCE *of* Freeholds *and* Covenant *to* Surrender Copyholds *by a* Mortgagor *and* Mortgagee *to a* Purchaser (*b*).

CONVEYANCE OF FREEHOLDS AND COVENANT TO SURRENDER COPYHOLDS BY MORTGAGOR AND MORTGAGEE.

THIS INDENTURE, made the —— day of ——, Between C. D., of, &c. (*mortgagee*), of the first part, A. B., of, &c. Parties.

(*a*) An opinion has been expressed in a former part of this work that a trustee vendor retaining documents must give an undertaking for their safe custody, and this would apply equally to a mortgagee selling under a power of sale. But where a sale is made by a mortgagor, and the mortgagee joins merely to release the property from the debt, as in the above Precedent, he cannot be compelled to give either an acknowledgment or an undertaking. If he is willing to give the former, but not the latter, the proper course seems to be for the mortgagor to give a covenant as above. An undertaking by him before the deeds come into his possession would be ineffective. It is apprehended, however, that a mortgagee retaining the deeds, as in the above Precedent, will be answerable in damages if, owing to his negligence or that of his agents, they are destroyed or injured while in his possession, whether he gives the undertaking or not. See Hornby *v.* Matcham, 16 Sim. 325; Brown *v.* Sewell, 11 Hare, 49.

(*b*) Simultaneously with the execution of this deed, the mortgagee should

CONVEYANCE OF FREEHOLDS AND COVENANT TO SURRENDER COPYHOLDS BY MORTGAGOR AND MORTGAGEE.

(*vendor*), of the second part, and E. F., of, &c. (*purchaser*), of the third part: WHEREAS by an indenture dated the —— day of ——, and made between the said A. B. of the one part, and the said C. D. of the other part, the freehold and copyhold hereditaments hereinafter described were conveyed and covenanted to be surrendered to the use of the said C. D., his heirs and assigns, subject as to the said freehold hereditaments to a proviso for the redemption thereof upon payment by the said A. B. to the said C. D. of the sum of £1000, with interest thereon, on a day now past, and as to the said copyhold hereditaments subject to a condition to be inserted in the surrender thereof corresponding with the said proviso for redemption: AND WHEREAS in pursuance of the covenant in that behalf contained in the said indenture, the said copyhold hereditaments were on or about the —— day of —— surrendered out of court by the said A. B. to the use of the said C. D., his heirs and assigns, according to the custom of the manor of ——, of which the same are holden, subject to a condition for making void the said surrender upon payment of the said sum of £1000, with interest thereon as aforesaid; AND WHEREAS, &c. (*Recite agreement for sale by A. B. to E. F., for* £2000,—*that said principal sum of* £1000 *is still due, suprà*, p. 260): AND WHEREAS it has been agreed that the said sum of £1000 shall be paid to the said C. D. out of the said purchase-money, and that the said C. D. shall join in these presents in the manner hereinafter expressed, and that immediately after the execution of these presents, satisfaction of the hereinbefore recited conditional surrender shall be entered up on the rolls of the said manor: NOW THIS INDENTURE WITNESSETH, that (*Conveyance of freeholds as in testatum of Precedent No. XXX., suprà*, p. 260): AND THIS INDENTURE ALSO WITNESSETH, that in further pursuance of the said agreement, and for the consideration aforesaid, the said A. B., as beneficial owner, with the privity of the said C. D. hereby, &c. (*Covenant to surrender copyholds, see suprà*, p. 235, *adding as follows*), absolutely discharged from the hereinbefore recited conditional surrender, and

Recite indenture of mortgage of freeholds.

Conditional surrender of copyholds.

Agreement for sale.

That mortgage-money is owing.

Agreement that mortgage debt shall be paid out of purchase-money.

First testatum.

Conveyance of freeholds.

Second testatum.

Covenant to surrender copyholds.

sign a warrant to the steward of the manor to enter up satisfaction of the conditional surrender on the rolls of the manor. For a Precedent of such Warrant, see *infrà*.

the said principal money and interest thereby secured, and all claims and demands on account thereof (*Declaration as to apportionment of purchase-money for purpose of Stamp Act, suprà*, p. 251).

CONVEYANCE OF FREEHOLDS AND COVENANT TO SURRENDER COPYHOLDS BY MORTGAGOR AND MORTGAGEE.

In witness, &c.

No. XXXIV.

ASSIGNMENT *of* Leaseholds *by* Mortgagor, *and* Mortgagee *by* Subdemise, *the* Mortgage Debt *being paid out of the* Purchase-Money.

ASSIGNMENT OF LEASEHOLDS BY MORTGAGOR AND MORTGAGEE.

THIS INDENTURE, made, &c., Between A. B. of, &c. (*vendor, and mortgagor*), of the first part, C. D., of, &c. (*mortgagee*), of the second part, and G. H., of, &c. (*purchaser*), of the third part: Whereas by an indenture of lease (*here recite lease to A. B. for ninety-nine years, at the yearly rent of £——, and subject to building covenants; also mortgage by A. B. of the leasehold premises to C. D. for residue of term wanting ten days, to secure £500 and interest*): And whereas the said A. B. hath agreed to sell to the said G. H. the premises comprised in the said recited indenture of lease, for the unexpired residue of the said term of 99 years therein, subject to the said rent, covenants and conditions, at the price of £1000: And whereas the sum of £500 is still due on the security of the said recited indenture of mortgage, but all interest for the same has been paid up to the date of these presents: And whereas, upon the treaty for the said purchase it was agreed that the said mortgage debt of £500 should be paid out of the said purchase-money, or sum of £1000: NOW THIS INDENTURE WITNESSETH, that in consideration, &c. (*considerations to mortgagee and vendor, suprà*, p. 260), the said A. B., as beneficial owner, hereby assigns, and the said C. D. as mortgagee at the request of the said A. B., and to the intent that the said derivative term created by the said recited indenture of mortgage shall be merged and extinguished in the said term of 99 years created by the said recited indenture of lease as aforesaid, hereby surrenders unto the

Parties.

Recite indentures of lease and mortgage.

Agreement for sale.

Sum still due on mortgage.

Arrangement that debt shall be paid out of purchase-money.

Vendor assigns and mortgagee surrenders premises.

ASSIGNMENT OF LEASEHOLDS BY MORTGAGOR AND MORTGAGEE.

said G. H., ALL the piece or parcel of land and premises comprised in and demised by the said recited indenture of lease, and the messuage and other buildings which have been erected on the said piece or parcel of land since the date of the same indenture of lease: TO HOLD the same unto the said G. H., for all the residue now unexpired of the said term of 99 years, subject to the rent reserved by the said recited indenture of lease, and the covenants and conditions in the same indenture contained, and henceforth on the part of the lessee, to be observed and performed, but absolutely discharged from the said mortgage debt of £500, and all interest for the same, and all claims and demands on account thereof (*Covenant by G. H. with A. B. to pay rent and perform covenants, and keep vendor indemnified therefrom, suprà*, p. 238).

To hold to purchaser for residue of term and so that derivative term shall merge.

Subject to rent and lessee's covenants.

IN WITNESS, &c.

No. XXXV.

CONVEYANCE BY MORTGAGEE UNDER POWER.

CONVEYANCE *by a* MORTGAGEE *under a* POWER OF SALE.

THIS INDENTURE, made the —— day of ——, BETWEEN A. B., of, &c. (*vendor*), of the one part, and C. D., of, &c. (*purchaser*), of the other part: WHEREAS by an indenture dated the —— day of ——, and made between G. H. of the one part, and the said A. B. of the other part, the hereditaments hereinafter described were conveyed by the said G. H. unto and to the use of the said A. B. in fee simple, by way of mortgage for securing payment to him of the sum of £2000, with interest thereon; And by the indenture now in recital it was declared that it should be lawful for the said A. B., his executors, administrators, or assigns, at any time or times without any further consent on the part of the said G. H., his heirs or assigns, to sell the said hereditaments, or any part or parts thereof, either together or in lots, and either by public auction or by private contract, and subject to any conditions as to title or otherwise, as the said A. B., his executors, administrators, or assigns, should think fit with power for the said A. B., his executors, administrators, or

Parties.

Recite mortgage to vendor.

Power of sale in mortgagee.

assigns, to execute assurances and give effectual receipts for the purchase-money, and do all other acts and things necessary or expedient for completing such sale: AND WHEREAS in exercise of the said power of sale contained in the said indenture, the said A. B. hath agreed to sell the said hereditaments to the said C. D. at the price of £——: NOW THIS INDENTURE WITNESSETH, that in consideration, &c. (*the receipt, &c.*), the said A. B., as mortgagee, hereby conveys, &c. (*Conveyance of freeholds by A. B. to C. D. in fee simple, suprà*, p. 225).

CONVEYANCE BY MORTGAGEE UNDER POWER.

Contract for sale.

Conveyance by mortgagee to purchaser.

IN WITNESS, &c.

No. XXXVI.

CONVEYANCE *of* FREEHOLDS *by a* MORTGAGEE *under the* POWER *of* SALE CONFERRED *by the* CONVEYANCING *Act*, 1881 (*a*).

CONVEYANCE BY MORTGAGEE UNDER STATUTORY POWER.

THIS INDENTURE, made the —— day of ——, BETWEEN A. B., of, &c. (*mortgagee and vendor*), of the one part, and C. D., of, &c. (*purchaser*), of the other part: WHEREAS (*here recite indenture whereby the hereditaments hereinafter described were conveyed by G. H. to A. B., subject to a proviso for the redemption thereof upon payment by the said G. H. to the said A. B. of the sum of* £2000, *with interest thereon, on the —— day of —— then next*): AND WHEREAS, in exercise of the power of sale conferred by the Conveyancing and Law of Property Act, 1881, and of all other powers in any wise enabling him in this behalf, the said A. B. hath agreed to sell to the said C. D. the hereditaments hereinafter described, at the price of £——: NOW THIS INDENTURE WITNESSETH that in consideration of the sum of £—— to the said A. B. paid by the said C. D., on or before the execution of these presents (*the receipt, &c.*), the said A. B., as mortgagee, hereby conveys unto the said C. D. ALL, &c. (*parcels*), TO HOLD the same unto and to the use of the said C. D. in fee simple.

Parties.

Recite agreement to sell pursuant to statutory power.

Consideration.

Mortgagee, pursuant to statutory power, conveys parcels to purchaser.

IN WITNESS, &c.

(*a*) See sections 19, 20, 21, 22, 67.

No. XXXVII.

CONVEYANCE BY PERSONAL REPRESENTATIVES OF SURVIVOR OF TWO MORTGAGEES ADVANCING MONEY JOINTLY.

CONVEYANCE *of* FREEHOLDS *by the* LEGAL PERSONAL REPRESENTATIVES *of the* SURVIVOR *of* TWO MORTGAGEES *who* ADVANCED *the* MONEY JOINTLY (*a*).

THIS INDENTURE, made the —— day of ——, BETWEEN A. B., of, &c., and C. D., of, &c. (*personal representatives of* E. F.), of the one part, and N. O., of, &c. (*purchaser*), of the other part: WHEREAS by an indenture dated, &c., and made between X. Y., of the one part, and E. F. and G. H., of the other part, in consideration of the sum of £—— to the said X. Y. paid by the said E. F. and G. H. out of monies belonging to them on a joint account, the hereditaments hereinafter described were conveyed by the said X. Y. unto the said E. F. and G. H., in fee simple, subject to a proviso for redemption thereof upon payment by the said X. Y. unto the said E. F. and G. H. [or the survivor of them, or the executors or administrators of such survivor, their or his assigns (*b*)] of the sum of £—— with interest thereon as therein mentioned (*here add power in the mortgage enabling the said E. F. and G. H. to sell*): AND WHEREAS the said G. H. died on the —— day of ——, leaving the said E. F. him surviving: AND WHEREAS the said E. F. died on the —— day of ——, 1882, having duly made his will, dated, &c., whereby he appointed the said A. B. and C. D. executors thereof, and such will was duly proved by the said executors on the —— day of ——, in the Probate Registry at —— of the High Court of Justice: AND WHEREAS in exercise of the said power of sale contained in the said indenture the said

Parties.

Recite mortgage to two persons who jointly advance.

Death of one of the mortgagees.

Death of surviving mortgagee, having first made his will whereby he appointed vendors his executors.

Agreement for sale by personal representatives of surviving mortgagee.

(*a*) The Conveyancing Act, 1881, enacts, that in cases of deaths occurring after the 31st December, 1881, "where an estate or interest of inheritance, or limited to the heir as special occupant in any tenements or hereditaments, corporeal or incorporeal, is vested on any trust or by way of mortgage in any person solely, the same shall on his death, notwithstanding any testamentary disposition, devolve to and become vested in his personal representatives or representative from time to time in like manner as if the same were a chattel real vesting in them or him (sect. 30).

(*b*) These words will be inserted or omitted, according as they occur or not in the recited deed.

A. B. and C. D., as the personal representatives of the said E. F., have agreed to sell to the said N. O. the said hereditaments at the price of £——: NOW THIS INDENTURE WITNESSETH, that in consideration of the sum of £—— to the said A. B. and C. D., as the personal representatives of the said E. F., paid by the said N. O. on or before the execution of these presents (*the receipt, &c.*) the said A. B. and C. D. as such personal representatives as aforesaid hereby convey unto the said N. O. ALL, &c. (*parcels*), TO HOLD the same unto and to the use of the said N. O. in fee simple.

IN WITNESS, &c.

CONVEYANCE BY PERSONAL REPRESENTATIVES OF SURVIVOR OF TWO MORTGAGEES ADVANCING MONEY JOINTLY.

Conveyance by personal representatives of surviving mortgagee to purchaser.

No. XXXVIII.

CONVEYANCE *by the* EXECUTOR *and* HEIR *of deceased* TRANSFEREE *of a* MORTGAGE *under a* POWER OF SALE *in a* MORTGAGE (*a*).

BY EXECUTOR AND HEIR OF TRANSFEREE OF MORTGAGE UNDER POWER.

THIS INDENTURE, made the —— day of ——, BETWEEN C. D., of, &c. (*heir of transferee of mortgage*), of the first part, A. B., of, &c. (*executor of transferee*), of the second part, and E. F., of, &c. (*purchaser*), of the third part (*Recite mortgage to G. H. for* £1000, *with power to G. H., his executors, administrators, or assigns, to sell in case of default, and declaration that the power might be exercised by any person entitled to give a discharge for mortgage-money*): AND WHEREAS by an indenture dated the —— day of ——, indorsed on the said

Parties.

Recite mortgage with power of sale.

(*a*) The 4th section of the Vendor and Purchaser Act, 1874, provided that the legal personal representatives of a mortgagee might, on payment of all sums secured by the mortgage, convey the mortgaged estate; but it is apprehended that that section could not apply unless it appeared on the face of the conveyance that the purchase-money would be sufficient to pay off the whole mortgage debt, and the personal representatives admitted that by the sale and conveyance all sums secured by the mortgage had been paid. This section was repealed by the Conveyancing Act, 1881, sect. 10, as from the 31st December, 1881; so that if the transferee had died subsequently to that date the legal estate under sect. 30 of the last-mentioned Act must have devolved on his personal representatives, in which case the concurrence of the heir would have been unnecessary.

BY EXECUTOR AND HEIR OF TRANSFEREE OF MORTGAGE UNDER POWER.

indenture of mortgage, and made between the said G. H. of the one part, and J. K. of, &c., of the other part, the principal sum of £1000 secured by the said indenture of mortgage, and the interest thereof, were assigned unto the said J. K. absolutely, and the hereditaments comprised in the said indenture were conveyed unto and to the use of the said J. K. in fee simple, subject to such right or equity of redemption as was then subsisting therein: AND WHEREAS the said J. K. died on the —— day of ——, 1880, having duly made his will, dated the —— day of ——, whereby he appointed the said A. B. the sole executor thereof, who shortly afterwards duly proved the same in the Probate Registry at —— of the High Court of Justice: AND WHEREAS the said will contained no devise of estates vested in the said J. K. as mortgagee, and he died intestate as to such estates, leaving the said C. D. his heir at law: AND WHEREAS the said principal sum of £1000 still remains due to the said A. B., as the executor of the said J. K., upon the security of the said indenture of mortgage: AND WHEREAS, in exercise of the said power of sale contained in the said indenture of mortgage as aforesaid, the said A. B. has agreed, &c. (*agreement by A. B. for sale to E. F.*): AND WHEREAS the said C. D., at the request of the said A. B., has agreed to join in these presents for the purpose of conveying the legal estate in the said hereditaments which has devolved upon him as the heir at law of the said J. K.: NOW THIS INDENTURE WITNESSETH, that in consideration of the sum of £—— to the said A. B. paid by the said E. F. on or before the execution of these presents (*the receipt, &c.*), the said C. D. as trustee, at the request of the said A. B. as mortgagee, hereby conveys, and the said A. B. as mortgagee, hereby conveys and confirms unto the said E. F. (*Conveyance of freeholds to E. F. in fee simple, suprà*, p. 225).

Transfer of mortgage.

Death of transferee and his will appointing vendor to be executor.

That will contained no devise of mortgage estates.

That mortgage-money is still due.

Agreement for sale by executor.

That heir had agreed to join.

Witnessing part.

Heir conveys and executor confirms parcels to purchaser in fee.

IN WITNESS, &c.

No. XXXIX.

CONVEYANCE *of an* ESTATE *subject to a* MORTGAGE DEBT, *which the* PURCHASER *undertakes to* PAY OFF (*a*). CONVEYANCE SUBJECT TO MORTGAGE DEBT.

THIS INDENTURE, made the —— day of ——, BETWEEN A. B., of, &c. (*vendor*), of the one part, and C. D., of, &c. (*purchaser*), of the other part (*Recite indenture of mortgage for securing £700 and interest*): AND WHEREAS the said principal sum of £700 still remains due and owing on the security of the hereinbefore recited indenture, but all interest for the same has been paid up to the date of these presents: AND WHEREAS the said A. B. hath agreed to sell to the said C. D. the said hereditaments (subject to the said principal sum of £700 and the interest henceforth to become due for the same), at the price of £——: NOW THIS INDENTURE WITNESSETH, that in consideration of the sum of £—— to the said A. B. paid by the said C. D. on or before the execution of these presents (*the receipt whereof, &c.*), THE said A. B., as beneficial owner, hereby conveys unto the said C. D., ALL, &c. (*parcels*): TO HOLD the same (subject nevertheless to the said indenture of mortgage, and the said sum of £700 thereby secured, and all interest henceforth to become due in respect of the same), unto and to the use of the said C. D. in fee simple: AND THE SAID C. D. hereby covenants with the said A. B., that the said C. D., his heirs, executors, administrators, or assigns, will pay the said principal sum of £——, and all interest henceforth to become due thereon, and will keep indemnified the said A. B., and his estate and effects, from all claims and demands on account thereof.

Parties.

Recite indenture of mortgage.

Principal money still due.

Contract for sale subject to mortgage debt.

Witnessing part.

Consideration.

Vendor conveys parcels

to purchaser subject to mortgage debt and interest.

Covenant by purchaser to indemnify the vendor from mortgage debt.

IN WITNESS, &c.

(*a*) The *ad valorem* stamp duty on this deed will be on the purchase-money *plus* the £700 due on the mortgage: 33 & 34 Vict. c. 97, sect. 73.

No. XL.

CONVEYANCE OF EQUITY OF REDEMPTION TO MORTGAGEE.

CONVEYANCE *of the* EQUITY *of* REDEMPTION *in* FREEHOLDS *to a* MORTGAGEE *as* PURCHASER.

Parties. THIS INDENTURE, made the —— day of ——, BETWEEN A. B., of, &c. (*mortgagor and vendor*), of the one part, and C. D., of, &c. (*purchaser*), of the other part (*Recite mortgage of freeholds to C. D. to secure the sum of £500, and interest, and that principal is still due*): AND WHEREAS the said A. B. hath agreed to sell the said hereditaments to the said C. D. at the price of £1000, and it has been agreed that the said mortgage debt of £500 shall be retained by the said C. D. out of the said purchase-money: NOW THIS INDENTURE WITNESSETH, that in consideration of the sum of £500 retained by the said C. D. in full satisfaction of the principal sum of £500 so as aforesaid remaining due and owing to him upon the said mortgage security (and which last-mentioned sum the said C. D. hereby declares to be fully satisfied accordingly), and also in consideration of the sum of £500 to the said A. B. paid by the said C. D. on or before the execution of these presents (the receipt of which last-mentioned sum of £500, making with the said sum of £500, retained as aforesaid, the said purchase-money of £1000, the said A. B. hereby acknowledges), the said A. B., as beneficial owner, hereby conveys, &c. (*Conveyance by A. B. to C. D. in fee simple.*)

Recite mortgage.

Agreement for sale, and that mortgage debt be retained out of purchase-money.

Witnessing part.

Consideration.

Conveyance to purchaser in fee.

IN WITNESS, &c.

No. XLI.

CONVEYANCE BY MORTGAGOR AND MORTGAGEE, THE MORTGAGE DEBT BEING KEPT ON FOOT.

CONVEYANCE *by a* VENDOR *and his* MORTGAGEE *to a* TRUSTEE *for the* PURCHASER, *the* MORTGAGE DEBT *being kept on foot as a protection against* MESNE INCUMBRANCES (*a*).

Parties. THIS INDENTURE, made, &c., BETWEEN A. B., of, &c. (*mortgagee*), of the first part, C. D., of, &c. (*mortgagor and vendor*),

(*a*) See Adams *v.* Angell, 5 Ch. D. 634.

CONVEYANCE BY MORTGAGOR AND MORTGAGEE, THE MORTGAGE DEBT BEING KEPT ON FOOT.

of the second part, E. F. of, &c. (*purchaser*), of the third part, and G. H. of, &c. (*trustee*), of the fourth part (*recite mortgage in fee by C. D. to A. B. to secure* £500 *and interest,—agreement by C. D. for sale of the hereditaments to E. F. free from incumbrances, for* £1000—*and that principal sum remains due*): AND WHEREAS upon the treaty for the said purchase it was agreed that the said mortgage debt of £500 should be paid by the said E. F. to the said A. B. out of the said purchase-money, and that the said mortgage debt, and the securities for the same, should be assigned and conveyed to a trustee for the benefit of the said E. F. as hereinafter mentioned: NOW THIS INDENTURE WITNESSETH, that in pursuance of the aforesaid agreement in this behalf, and in consideration, &c. (£500 *paid to A. B. and* £500 *to C. D., the receipt, &c.*), THE said A. B., as mortgagee, by the direction of the said C. D., and on the nomination of the said E. F., hereby assigns unto the said G. H. (*Assignment of mortgage debt and the securities, infrà*, "Transfer of Mortgage of Freeholds"): TO HOLD the same unto the said G. H., absolutely, UPON TRUST to assign and dispose of the same as the said E. F., his heirs or assigns, shall from time to time direct, and in the meantime to permit and suffer the same to wait upon and attend the freehold and inheritance of the hereditaments hereinafter conveyed, and to protect the same from all mesne incumbrances, if such there be: AND THIS INDENTURE ALSO WITNESSETH, that in pursuance of the aforesaid agreement in this behalf, and for the considerations aforesaid, THE SAID A. B., as mortgagee, by such direction and on such nomination as aforesaid, hereby conveys, and the said C. D., as beneficial owner, hereby conveys and confirms unto the said G. H., ALL, &c. (*parcels*): TO HOLD the same unto and to the use of the said G. H., in fee simple, UPON TRUST in the first place for better securing the said principal money, interest, and premises hereinbefore assigned, and subject thereto, IN TRUST for the said E. F., in fee simple, and to be conveyed and disposed of as the said E. F., his heirs or assigns, shall from time to time direct.

Agreement that mortgage debt and securities should be vested in a trustee for purchaser.

Witnessing part.

Assignment of mortgage debt and securities to trustee in trust for purchaser.

Conveyance of parcels to trustee in trust for securing the mortgage debt and interest, and, subject thereto, in trust for purchaser.

IN WITNESS, &c.

No. XLII.

OF FREEHOLDS BY TWO TENANTS IN COMMON.

CONVEYANCE *of* FREEHOLDS *by* TWO TENANTS IN COMMON.

Parties.

THIS INDENTURE, made the —— day of ——, BETWEEN A. B. of, &c. (*the owner of one moiety*), of the first part, C. D. of, &c. (*the owner of the other moiety*), of the second part, and E. F. of, &c. (*purchaser*), of the third part: (*Recite will of X. Y., devising the property to his two sons, A. B. and C. D., their heirs and assigns, in equal shares as tenants in common,—the death of X. Y. and probate of his will:*) AND WHEREAS the said A. B. and C. D. have agreed, &c. (*agreement for sale, see suprà*, p. 226): NOW THIS INDENTURE WITNESSETH, that in consideration of the sum of £—— to the said A. B. and C. D. paid by the said E. F. on or before the execution of these presents (the receipt whereof the said A. B. and C. D. hereby acknowledge), THE SAID A. B. as to one undivided moiety of the hereditaments hereinafter described, as beneficial owner, and as to all other (if any) his share, estate, and interest therein, AND the said C. D. as to the other undivided moiety of the same hereditaments, as beneficial owner, and as to all other (if any) his share, estate, and interest therein, do respectively hereby convey unto the said E. F., ALL, &c. (*parcels*): TO HOLD the same unto and to the use of the said E. F., in fee simple.

Consideration,

One of vendors as to one moiety,

and other vendor as to other moiety,

convey parcels,

to purchaser in fee.

IN WITNESS, &c.

No. XLIII.

CONVEYANCE *of* FREEHOLDS *by* THREE TENANTS IN COMMON (TWO *of them being* MARRIED WOMEN) (*a*).

OF FREEHOLDS BY TENANTS IN COMMON, TWO BEING MARRIED WOMEN.

THIS INDENTURE, made, &c., BETWEEN A. B. of, &c., (*owner of one third*), of the first part, C. D. of, &c., and E. his wife (*E. being owner of one other third*), of the second part, G. H. of, &c. and I. his wife (*I. being owner of the remaining third*), of the third part, and L. M. of, &c. (*purchaser*), of the fourth part: (*Recite will of X. Y. devising the property to his three sisters A. B., E., and I., their heirs and assigns, in equal shares as tenants in common—death of X. Y., on the —— day of ——, 1880, and probate of his will*): AND WHEREAS the said E. intermarried with the said C. D. on the —— day of ——, 1878, and the said I. intermarried with the said G. H. on the —— day of ——, 1879: AND WHEREAS the said A. B., C. D. and E. his wife, and G. H. and I. his wife, have agreed, &c. (*agreement for sale, see suprà*, p. 226): NOW THIS INDENTURE WITNESSETH that, in consideration of the sum of £—— to the said A. B., C. D. and E. his wife, and G. H. and I. his wife, paid by the said L. M. (*the receipt, &c.*), THE said A. B. as to one undivided third part or share of the hereditaments hereinafter described, as beneficial owner, and as to all other (if any) his share, estate, and interest therein, AND the said C. D. and E. his wife as to one other undivided third part or share of the same hereditaments, as beneficial owners, and as to all other (if any) the share, estate, and interest of the said C. D. and E. his wife, or either of them, therein, AND the said G. H. and I. his wife as to the remaining one undivided third part or share of the same hereditaments, as beneficial owners, and as to all other (if any) the share, estate, and interest of the said G. H. and I. his wife, or either of them, therein, hereby respectively convey unto the said L. M., ALL, &c. (*parcels*): TO HOLD the same unto and to the use of the said L. M., in fee simple.

Parties.

Marriage of the two sisters of testator.

Agreement for sale.

Witnessing part.

Consideration.

Conveyance by the three tenants in common and the husbands of the two sisters.

To purchaser in fee.

IN WITNESS, &c.

(*a*) The two sisters having married before 1883, and the testator having died before that date, this deed must be acknowledged by the married women. If the testator had died subsequently to 1882, the shares would have been separate property by virtue of the Married Women's Property Act, 1882, and in that case an acknowledgment would have been unnecessary.

No. XLIV.

BY SEVERAL TENANTS IN COMMON WHERE ONE SHARE HAS BEEN CONVEYED IN TRUST FOR SALE.

CONVEYANCE *of Freeholds by several* TENANTS *in* COMMON, *the* SHARE *of one having been assured upon* TRUST *for* SALE *and being now* CONVEYED PURSUANT *to this* TRUST.

Parties.

THIS INDENTURE, made the —— day of ——, BETWEEN A. B. of, &c. (*owner of two undivided fourth parts of the hereditaments*), of the first part, C. D. of, &c. (*owner of one other undivided fourth part*), of the second part, E. F. of, &c. and G. H. of, &c. (*trustees for sale of the remaining one undivided fourth part*), of the third part, and I. K. of &c. (*purchaser*), of the fourth part: WHEREAS X. Y., late of, &c. deceased, duly made his will, dated, &c., and thereby, after making certain specific devises and bequests, he devised and bequeathed all the residue of his real and personal estate and effects as follows: as to two undivided fourth parts or shares thereof unto his son the said A. B., and as to one other undivided fourth part or share thereof unto his son the said C. D., and as to the remaining one undivided fourth part or share thereof unto his son L. M. (since deceased), and the said testator appointed his sons the said A. B. and C. D. executors of his said will: AND WHEREAS, &c. (*Recite death of testator and probate of his will*): AND WHEREAS the hereditaments hereinafter described form part of the residuary real estate of the said testator: AND WHEREAS (*Recite will of L. M., giving all his real and personal estate to E. F. and G. H. upon trust for sale—death of L. M. and probate of his will*): AND WHEREAS the said A. B. and C. D. as to three undivided fourth parts or shares of and in the hereditaments hereinafter described, and the said E. F. and G. H. as to the remaining one undivided fourth part or share of and in the same hereditaments, and in exercise of the trust for this purpose contained in the said will of the said L. M., deceased, have respectively agreed to sell to the said I. K. the said hereditaments, at the price of £——: NOW THIS INDENTURE WITNESSETH that, in consideration of the sum of £—— (being two fourth parts of the said purchase-money of £——) to the said A. B., the sum of

Recite devise of residuary estate.

As to two-fourths for son.

As to one-fourth for another son,

and as to remaining fourth for another son who has died.

Hereditament to be conveyed form part of residuary estate.

Agreement for sale.

Witnessing part.

£—— (being one fourth part of the said purchase-money) to the said C. D., and the sum of £—— (being the remaining one fourth part of the said purchase-money) to the said E. F. and G. H., respectively paid by the said I. K. on or before the execution of these presents (the receipt of which several sums respectively the said A. B. and C. D., and the said E. F. and G. H., do hereby respectively acknowledge) THE SAID A. B. as to two undivided fourth parts or shares of the hereditaments hereinafter described as beneficial owner, and as to all other (if any) his share, estate, and interest therein, AND the said C. D. as to one other undivided fourth part or share of the same hereditaments, as beneficial owner, and as to all other (if any) his share, estate, and interest therein, AND the said E. F. and G. H. as trustees as to the remaining one undivided fourth part or share of the same hereditaments and as to all other (if any) their share, estate, and interest therein, do hereby respectively convey unto the said I. K., ALL, &c. (*parcels*), TO HOLD the same, unto and to the use of the said I. K., in fee simple.

BY SEVERAL TENANTS IN COMMON WHERE ONE SHARE HAS BEEN CONVEYED IN TRUST FOR SALE.

Parties of the 1st, 2nd and 3rd parts convey parcels

to purchaser in fee.

IN WITNESS, &c.

No. XLV.

CONVEYANCE *by* TENANTS *in* COMMON. COVENANTS *by the* FATHER *of one of the* VENDORS, *who is an* INFANT, *that he shall join on his attaining* TWENTY-ONE, *and* DECLARATION *of* TRUST *as to his* SHARE *in the* PURCHASE-MONEY.

CONVEYANCE BY TENANTS IN COMMON, ONE OF THEM BEING AN INFANT.

THIS INDENTURE, made, &c., BETWEEN A. B. of, &c. (*owner of one moiety*), of the first part, C. D. of, &c. (*the infant owner of other moiety*), of the second part, E. F. of, &c. (*father of the infant*), of the third part, G. H. of, &c. (*trustee*), of the fourth part, and L. M. of, &c. (*purchaser*), of the fifth part (*Recite will of X. Y. devising the property to A. B. and C. D. as tenants in common,—agreement for sale by A. B. and C. D. to L. M.*): AND WHEREAS, inasmuch as the said C. D. is under the age of

Parties.

Agreement for sale by tenants in common.

CONVEYANCE BY TENANTS IN COMMON, ONE OF THEM BEING AN INFANT.

Infancy of one of the tenants in common, and arrangement as to his share.

twenty-one years, the said E. F. hath consented to enter into such covenants as are hereinafter contained, for securing the conveyance by the said C. D. on his attaining the said age, or in the event of his decease under that age for securing the conveyance by his heir of the undivided share of the said C. D. in the said hereditaments to such uses as are hereinafter expressed, and it hath also been arranged that the sum of £——, being the share of the said C. D. in the said purchase-money shall be held by the said G. H. upon the trusts hereinafter expressed:

Witnessing part.

NOW THIS INDENTURE WITNESSETH, that in consideration of the sum of £—— by the said L. M. paid to the said A. B. on or before the execution of these presents (the receipt whereof the said A. B. hereby acknowledges), and also in consideration of the sum of £—— by the said L. M. placed in the hands of the said G. H. to be held by him on the trusts hereinafter mentioned (the receipt of which last-mentioned sum of £—— the said G. H. hereby acknowledges),

Conveyance by tenants in common.

the said A. B. as to one undivided moiety of the hereditaments hereinafter described as beneficial owner and as to all other (if any) his estate and interest therein, and the said C. D. as to the other undivided moiety of the said hereditaments as beneficial owner and as to all other (if any) his estate and interest therein do hereby respectively convey unto the said L. M., ALL, &c. (*parcels*):

to purchaser.

TO HOLD the same unto and to the use of the said L. M., in fee simple:

Father of infant covenants that infant shall join on attaining his majority,

AND THE SAID E. F. hereby covenants with the said L. M. (*a*), that the said C. D. shall execute these presents within one calendar month next after he shall have attained the age of twenty-one years, or in the event of the death of the said C. D. before he shall have attained that age, then that his heir shall, within one calendar month next after the decease of the said C. D., or the attainment by such heir of the age of twenty-one years (which shall last happen), convey the said undivided moiety of the said C. D. of and in the said hereditaments, unto and to the use of the said L. M. in fee simple, in manner

(*a*) By the 58th section of the Conveyancing Act, 1881, it is provided that a covenant relating to land of inheritance or devolving on the heir as special occupant shall be deemed to be made with the covenantee, his heirs and assigns, and shall have effect as if heirs and assigns were expressed.

aforesaid: And that in the meantime the said L. M., his heirs and assigns, shall, from the date of these presents, have quiet and uninterrupted possession of the said moiety of the said C. D., and shall receive the rents and profits thereof, for his and their absolute use and benefit, without any interruption, claim or demand from or by the said C. D., or any person lawfully claiming under him or on his behalf: And it is hereby declared that the said G. H., his executors and administrators, shall at once invest the said sum of £—— so placed in his hands in the £3 per Cent. Consolidated Annuities, and shall accumulate the dividends thereof during the infancy of the said C. D., and subject thereto the said trust monies, and the dividends thereof, shall go as follows, that is to say: If the said C. D., or his heir, shall comply with the covenants of the said E. F. hereinbefore contained, Then in trust for the said C. D. or his heir absolutely: But if the said C. D. or his heir shall neglect or refuse to comply with the said covenant, Then in trust for the said L. M. absolutely.

Conveyance by tenants in common, one of them being an infant.

and that purchaser shall have quiet possession in the meantime.

Declaration of trust as to infant's share in purchase-money.

In witness, &c.

No. XLVI.

Conveyance *of* Undivided Moiety *in* Freeholds *by one* Tenant *in* Common *to his* Co-Tenant.

Of one moiety to tenant of other moiety.

THIS INDENTURE, made, &c., Between A. B. of, &c. (*vendor*), of the one part, and C. D., of &c. (*purchaser*), of the other part (*Recite conveyance to A. B. and C. D., their heirs and assigns, as tenants in common*): And whereas the said A. B. hath agreed to sell his moiety of the said hereditaments to the said C. D. at the price of £——: NOW THIS INDENTURE WITNESSETH, that in consideration of the sum of £—— to the said A. B. paid by the said C. D. on or before the execution of these presents (*the receipt, &c.*), The said A. B., as beneficial owner, hereby conveys unto the said C. D., All that the one undivided moiety of the said A. B. of and in (*parcels*): To hold the same unto and to the use of the said C. D., in fee simple.

Parties.

Agreement by one tenant in common to sell to the other.

Consideration.

Vendor conveys to purchaser.

In witness, &c.

No. XLVII.

CONVEYANCE BY JOINT TENANTS.

CONVEYANCE *of* FREEHOLDS *by* JOINT-TENANTS.

Parties.

THIS INDENTURE, made the —— day of ——, BETWEEN A. B. of, &c., and C. D. of, &c. (*vendors*), of the one part, and E. F. of, &c. (*purchaser*), of the other part (*Recite instrument creating joint tenancy in vendors*): AND WHEREAS the said A. B. and C. D. have agreed to sell to the said E. F. the hereditaments hereinafter described at the price of £——: NOW THIS INDENTURE WITNESSETH, that in consideration of the sum of £—— to the said A. B. and C. D. paid by the said E. F. on or before the execution of these presents (the receipt whereof the said A. B. and C. D. hereby acknowledge), THE SAID A. B. as to one undivided moiety of the hereditaments hereinafter described, as beneficial owner, and as to all other (if any) his estate and interest in the said hereditaments, AND the said C. D. as to the other undivided moiety of the said hereditaments, as beneficial owner, and as to all other (if any) his estate and interest therein, do hereby convey (*a*) unto the said E. F., ALL, &c. (*Parcels*): TO HOLD the same unto and to the use of the said E. F., in fee simple.

Recite conveyance to vendors as joint-tenants in fee.

Considera-tion.

Vendors convey,

parcels,

to purchaser in fee.

IN WITNESS, &c.

Each of the two joint-tenants should convey a moiety.

(*a*) Where two joint tenants who are beneficial owners sell, it is proper to make each convey a moiety, thereby limiting to a moiety his liability under the statutory covenant for title. See Co. Lit. 186a, where Lord Coke, speaking of joint tenants, says: "And albeit they are so seised (*i.e. per mie et per tout*), yet to divers purposes each of them has but a right to a moiety, as to enfeoff, give or demise. And where all the joint tenants join in a feoffment every of them in judgment of law doth give but his part. And Littleton afterwards in this chapter saith that one joint tenant hath one moiety in law, and the other the other moiety."

No. XLVIII.

ASSIGNMENT *by the Owners of* TWO THIRD PARTS *of monies to arise from the sale of* FREEHOLD HEREDITAMENTS *which are impressed with a* TRUST *for* SALE *after the death of the tenant for life—the* OWNER *of the* REMAINING THIRD PART *being the* PURCHASER, *and* ELECTING *to take the entirety as* REAL ESTATE. ASSIGNMENT OF REVERSIONARY SHARES IN PROCEEDS OF SALE.

THIS INDENTURE, made the —— day of ——, BETWEEN A. B. of, &c. (*owner of one third part of reversionary proceeds*), of the first part, C. D. of, &c. (*owner of one other third part of said reversionary proceeds*), of the second part, and E. F., of, &c. (*purchaser*) of the third part (*Recite will of X. Y. whereby he devised* (*here set out parcels as in will*) *unto G. H., for his life, and after his decease to trustees, upon trust to sell the same, and to stand possessed of proceeds of sale in trust for all the children of X. Y. who should be living at his decease, and should attain the age of twenty-one years in equal shares,—Death of X. Y., and probate of his will*): AND WHEREAS there were issue of the said X. Y. living at his decease five children and no more, viz., the said A. B., C. D., and E. F., all of whom have attained the age of twenty-one years, and two other children, who died under that age: AND WHEREAS the said A. B. and C. D. have agreed to sell to the said E. F. their respective two third parts or shares of the monies to arise from the sale of the hereditaments devised by the said will as aforesaid, at the price of £——: NOW THIS INDENTURE WITNESSETH, that in consideration of the sum of £—— to the said A. B. and C. D. paid by the said E. F. on or before the execution of these presents (*the receipt, &c.*), THE SAID A. B. as beneficial owner as to his one third part or share of the monies hereinafter mentioned, AND the said C. D. as beneficial owner as to his one third part or share of the same monies, do hereby respectively assign unto the said E. F., ALL THOSE THE two several third parts or shares of them the said A. B. and C. D. respectively, of and in the monies to arise from the sale of the hereditaments so devised by the said recited will, upon trust for the sale thereof

Parties.

That there were three children of X. Y. who attained twenty-one.

Agreement for sale of two-thirds.

Witnessing part.

Consideration.

The owners of two-thirds

assign

two equal third parts of monies to arise from sale,

ASSIGNMENT OF REVERSIONARY SHARES IN PROCEEDS OF SALE.

after the decease of the said G. H. as aforesaid: To HOLD the same unto the said E. F., absolutely: And IT IS HEREBY declared by the said E. F. that the said hereditaments so devised by the said recited will of the said X. Y. as aforesaid shall henceforth (subject to the said life interest of the said G. H. therein) be held and enjoyed by the said E. F., in fee simple, as real estate absolutely discharged from the trust contained in the said will for the sale thereof after the decease of the said G. H. as aforesaid (*a*).

to owner of remaining one-third absolutely.

Declaration by purchaser that hereditaments shall be held discharged from trust for sale.

In WITNESS, &c.

No. XLIX.

CONVEYANCE BY SURVIVING COPARCENER AND HER MORTGAGEE AND DEVISEES IN COMMON OF DECEASED COPARCENER.

CONVEYANCE *by* Surviving Coparcener *and her* Mortgagee *and the* Devisees *in* common *of a* deceased Coparcener *to a* Purchaser.

THIS INDENTURE, made the —— day of ——, Between A. B. of, &c. (*mortgagee of one moiety*), of the first part, C. D. of, &c. (*mortgagor of the same moiety*), of the second part, E. F. of, &c. (*owner of one fourth share*), of the third part, G. H. of, &c. (*owner of remaining fourth share*), of the fourth part, and I. K. of, &c. (*purchaser*), of the fifth part: Whereas X. Y. late of, &c. died on the —— day of —— intestate, being at the time of his death seised in fee simple of the hereditaments hereinafter described, and leaving the said C. D. and N. O. his only daughters and co-heiresses at law: And whereas the said N. O. duly made her will, dated the —— day of ——, and thereby devised all her real estate unto the said E. F. and G. H., as tenants in common, in equal shares: And whereas the said N. O. died on the —— day of ——, without having revoked or altered her said will, which was shortly afterwards duly proved in the Probate Registry at —— of the High Court of Justice: And whereas (*Recite mortgage by C. D. of her share to A. B. to*

Parties.

Death of late owner intestate, leaving his daughters his co-heiresses.

Will of one co-heiress, her death and probate of will.

Mortgage by other co-heiress.

(*a*) After the execution of this assurance E. F. will enjoy the property, discharged from the trust for sale, as real estate, so that the legacy duty which would otherwise have been payable upon the sale monies will become an immediate charge upon the land itself, and must therefore be paid off before the estate can be sold to a future purchaser free from incumbrances. The duty in such a case must be paid upon a sum representing the actual value of the property.

secure £200, *and that principal sum is due,—Agreement by C. D., E. F., and G. H. for the sale of the property to I. K. for* £1000, *—agreement that A. B.'s mortgage debt shall be paid out of the share of C. D. in the purchase-money*): NOW THIS INDENTURE WITNESSETH, that in consideration of the sum of £200 to the said A. B., the sum of £300 to the said C. D., the sum of £250 to the said E. F., and the sum of £250 to the said G. H., respectively, paid by the said I. K., on or before the execution of these presents (the receipt of which several sums making together the said purchase-money of £1000 the said A. B., C. D., E. F. and G. H. respectively hereby acknowledge), THE SAID A. B., as mortgagee, as to one undivided moiety of the hereditaments hereinafter described by the direction of the said C. D., as beneficial owner, hereby conveys, AND the said C. D., as beneficial owner, as to the same moiety hereby conveys and confirms, AND the said E. F., as beneficial owner, as to one undivided fourth part or share of the said hereditaments, AND the said G. H., as beneficial owner, as to the remaining one undivided fourth part or share of the said hereditaments, hereby respectively convey unto the said I. K. (*parcels, habendum to I. K. in fee simple*).

CONVEYANCE BY SURVIVING COPARCENER AND HER MORTGAGEE AND DEVISEES IN COMMON OF DECEASED COPARCENER.

Agreement for sale.

Witnessing part.

Consideration.

All parties convey to purchaser in fee.

IN WITNESS, &c.

No. L.

CONVEYANCE *of* FREEHOLDS *to* TENANTS *in* COMMON, *who* ADVANCE *the* PURCHASE-MONEY *in* EQUAL SHARES.

CONVEYANCE OF FREEHOLDS TO TENANTS IN COMMON.

THIS INDENTURE, made the —— day of ——, BETWEEN A. B. of, &c. (*vendor*), of the one part, and C. D. of, &c., and E. F. of, &c. (*purchasers*), of the other part, WITNESSETH, that in consideration of the sum of £—— as purchase-money to the said A. B., paid by the said C. D. and E. F. in equal shares, on or before the execution of these presents (*the receipt, &c.*), THE SAID A. B., as beneficial owner, hereby conveys unto the said C. D. and E. F., ALL, &c. (*parcels*): TO HOLD the same unto and to the use of the said C. D. and E. F. as tenants in common in fee simple.

Parties.

Witnessing part.

Conveyance of freeholds to the use of purchasers as tenants in common.

IN WITNESS, &c.

No. LI.

CONVEYANCE UNDER POWER OF ATTORNEY

CONVEYANCE *of* FREEHOLDS *to* PURCHASER *under a* POWER *of* ATTORNEY *executed by the* VENDOR, *who is abroad* (*a*).

Parties. THIS INDENTURE, made, &c., BETWEEN A. B. of, &c., by E. F. of, &c., his attorney, under a deed-poll or instrument in writing dated the —— day of —— (*vendor*), of the one part, and C. D. of, &c. (*purchaser*), of the other part: WHEREAS G. H., late of, &c., deceased, being seised in fee simple of the hereditaments hereinafter described, duly made his will, dated, &c., and thereby devised all his lands and hereditaments in the county of ——, unto and to the use of the said A. B. (*Death of G. H., and probate of his will, and that lands hereinafter described form part of the hereditaments devised*): AND WHEREAS the said A. B., by the said E. F. his attorney, hath agreed to sell to the said C. D. the hereditaments hereinafter described at the price of £——: NOW THIS INDENTURE WITNESSETH, that in consideration of the sum of £——, to the said A. B. by the said E. F., his attorney, paid by the said C. D. on or before the execution of these presents (the receipt whereof the said A. B., by the said E. F., hereby acknowledges), the said A. B., as beneficial owner, by the said E. F., his attorney, hereby, &c. (*Conveyance of freeholds to C. D. in fee.*) IN WITNESS whereof, the said E. F., under and in exercise of the power for this purpose contained in the said deed poll or instrument in writing hath hereunto set the name and seal of the said A. B., the day and year first above written.

Recite testator's seisin.

Will of testator devising lands in a particular county to vendor.

Agreement for sale.

Considera-tion.

Conveyance by vendor of parcels.

SIGNED, SEALED, AND DELIVERED by the said E. F., as the attorney, and in the name and on the behalf of the said A. B., in the presence, &c.

(*a*) If the power is made irrevocable for a period not exceeding one year, and the conveyance is made within that period, the purchaser need make no inquiry as to the donor being still living. See Conveyancing Act, 1882, sect. 9.

No. LII.

CONVEYANCE *by* MORTGAGEE *whose* MORTGAGE DEED *contains* POWER *of* SALE, *and who claims* ABSOLUTE OWNERSHIP *as having been in* POSSESSION *for* TWELVE (*a*) YEARS *without* ACKNOWLEDGMENT *of* MORTGAGOR'S TITLE (*b*).

CONVEYANCE BY MORTGAGEE HAVING POWER OF SALE AND CLAIMING AS ABSOLUTE OWNER.

THIS INDENTURE, made the —— day of ——, BETWEEN A. B. of, &c. (*vendor*), of the one part, and C. D. of, &c. (*purchaser*), of the other part: WITNESSETH that, in consideration of the sum of £—— as purchase-money to the said A. B. paid by the said C. D. on or before the execution of these presents (*the receipt, &c.*), the said A. B., as beneficial owner, hereby conveys unto the said C. D., ALL (*parcels*), TO HOLD the same unto and to the use of the said C. D. in fee simple.

Parties.

Mortgagee and vendor convey parcels,

to purchaser in fee.

IN WITNESS, &c.

No. LIII.

CONVEYANCE *of* FREEHOLDS *to two* PARTNERS, *where the* PURCHASE *is made out of the* PARTNERSHIP ASSETS (*c*).

CONVEYANCE OF FREEHOLDS TO TWO PARTNERS.

THIS INDENTURE, made, &c., BETWEEN A. B. of, &c. (*vendor*), of the one part, and C. D. of, &c., and E. F. of, &c. (*pur-*

Parties.

(*a*) Twelve years are now substituted for twenty years by 37 & 38 Vict. c. 57, sec. 7.

(*b*) This form of conveyance is intentionally prepared without recitals. In one way or another the purchaser will get a good title. If the mortgagee has acquired an absolute ownership under the Statutes of Limitation, he can sell under such ownership. If, however, any question should arise as to the completeness of this ownership, the conveyance will operate as an execution of the power of sale without any express reference to it, and thus the existence of this power, and its exercise if required, obviate the necessity of the vendor proving his uninterrupted possession for the required period, and prevents the purchaser on the other hand from depending on an unmarketable title. (Johnson *v.* Mounsey, 11 Ch. D. 284.) It is assumed that the mortgage contains a clause making it unnecessary for the purchaser to ascertain that any monies are due on the security, or whether the required notice has been given.

(*c*) It is generally more convenient not to disclose the fact that the

CONVEYANCE OF FREEHOLDS TO TWO PARTNERS.

chasers) [being co-partners in the trade or business of ——, at ——, and carrying on the same under the style or firm of ——], of the other part: WITNESSETH, that in consideration of the sum of £—— as purchase-money to the said A. B. paid by the said C. D. and E. F. [out of partnership money], on or before the execution of these presents (*the receipt, &c.*), THE said A. B., as beneficial owner, hereby conveys unto the said C. D. and E. F., ALL, &c. (*parcels*): TO HOLD the same unto and to the use of the said C. D. and E. F., as tenants in common in fee simple [as part of their partnership property].

Consideration.

Conveyance of parcels to partners as part of the partnership property.

IN WITNESS, &c.

No. LIV.

CONVEYANCE BY EXECUTOR OF LAST SURVIVING TRUSTEE FOR SALE.

CONVEYANCE *of* FREEHOLDS *by the* LEGAL PERSONAL RRPRESENTATIVE *of the* SURVIVOR *of two* TRUSTEES *for* SALE (*a*).

Parties.

THIS INDENTURE, made, &c., BETWEEN A. B. of, &c. (*executor of last surviving trustee and vendor*), of the first part, and C. D. of, &c. (*purchaser*), of the other part. (*Recite will whereby the testator devised a messuage and other hereditaments in the county of —— to E. F. and G. H., upon trust for sale, as therein mentioned. Death of testator and probate of his will.*)

Death of one trustee, leaving his co-trustee surviving.

Death of surviving trustee.

Will of surviving trustee appointing executor

AND WHEREAS the said G. H. died on the —— day of ——, leaving the said E. F. his co-trustee him surviving: AND WHEREAS the said E. F. died on the —— day of ——, having first duly made his will dated, &c., whereby he appointed the said A. B. sole executor thereof, and such will was duly proved by the said A. B. on the —— day of —— in the principal Probate Registry of the High Court of Justice: AND WHEREAS, pursuant to the trust in this behalf contained in

property is bought for partnership purposes, and to let the conveyance be to the partners as tenants in common without reference to the partnership. If this recommendation is adopted, the words within brackets will be omitted in the above precedent. For precedents of deeds transferring partnership property or a share of partnership property on a change of partners, see vol. ii. PARTNERSHIP DEEDS.

(*a*) See note, p. 268, *suprà*.

the said will, the said A. B. as the personal representative of the said E. F., hath agreed to sell to the said C. D. the said messuage and hereditaments at the price of £—— : NOW THIS INDENTURE WITNESSETH, that in consideration, &c., (*the receipt, &c.*), the said A. B., as such personal representative as aforesaid, hereby conveys unto the said C. D., ALL, &c. (*parcels*). TO HOLD the same unto and to the use of the said C. D. in fee simple.

IN WITNESS, &c.

CONVEYANCE BY EXECUTOR OF LAST SURVIVING TRUSTEE FOR SALE.

Agreement by executor to sell, under trust for sale, contained in first recited will.

Conveyance by executor of last surviving trustee of parcels to purchaser in fee.

No. LV.

CONVEYANCE *of* FREEHOLDS *and* BARGAIN *and* SALE *of* COPYHOLDS, *by* TRUSTEES *for* SALE *under a* WILL (*a*).

CONVEYANCE OF FREEHOLDS AND BARGAIN AND SALE OF COPYHOLDS BY TRUSTEES FOR SALE.

THIS INDENTURE, made the —— day of ——, BETWEEN A. B. of, &c., and C. D. of, &c. (*vendors*), of the one part, and E. F. of, &c. (*purchaser*), of the other part: WHEREAS X. Y., late of, &c., deceased, being seised in fee simple of the freehold hereditaments hereinafter described, and being seised in customary fee simple of the copyhold hereditaments hereinafter described, subject to the rents, suits, and services therefor due and of right accustomed, duly made his will, dated, &c.; and thereby appointed the said A. B. and C. D. to be trustees of his said will; and the said testator, after certain specific bequests of personal estate, devised and bequeathed all his real estate not being of copyhold tenure, and all his personal estate not thereinbefore specifically bequeathed unto and to the use of his said trustees; and he devised all his messuages, lands, and hereditaments, being of copyhold tenure to such uses as his said trustees should by any deed or deeds to be executed within twenty-one years after his (the said testator's) decease, appoint; And the said testator declared that his trustees should sell and convert into money the said real and personal estate, including the said copyhold hereditaments and out of the monies to arise

Parties.

Recite will of X. Y.

(*a*) This deed contains no recital of the apportionment of the purchase-money as between the freeholds and copyholds, since for the purpose of the Stamp Act, there being no surrender of the latter, the deed of conveyance is the principal instrument for both properties.

CONVEYANCE OF FREEHOLDS AND BARGAIN AND SALE OF COPYHOLDS BY TRUSTEES FOR SALE.

from such sale pay the said testator's funeral and testamentary expenses and debts and the legacies bequeathed by his said will (*a*), and should invest the residue of the said monies in the manner therein mentioned: AND WHEREAS the said testator died on the —— day of ——, without having revoked or altered his said will so far as the same is hereinbefore recited, and the said will was shortly afterwards duly proved in the principal Probate Registry of the High Court of Justice: AND WHEREAS in exercise of the trust for that purpose contained in the said will, the said A. B. and C. D. have agreed to sell the said freehold and copyhold hereditaments hereinafter described to the said E. F., at the price of £——: NOW THIS INDENTURE WITNESSETH, that in consideration, &c. (*the receipt, &c.*) the said A. B. and C. D. as trustees hereby convey unto the said E. F., ALL, &c. (*freehold parcels, &c., habendum unto and to the use of E. F. in fee simple, suprà*, p. 225): AND THIS INDENTURE ALSO WITNESSETH, that for the consideration aforesaid, the said A. B. and C. D. as trustees, in exercise of the power for this purpose given to them by the said will of the said X. Y. as aforesaid, and of all other powers, if any, in any wise enabling them in this behalf, hereby bargain, sell, and appoint unto the said E. F., ALL, &c. (*copyhold parcels*): TO HOLD the same unto and to the use of the said E. F., in customary fee simple, according to the custom of the said manor, by and under the rents, suits, and services therefor due and of right accustomed.

Death of testator.

Agreement for sale.

First witnessing part.

Conveyance of freeholds to purchaser in fee.

Second witnessing part.

Bargain and sale of copyholds to purchaser.

IN WITNESS, &c.

No. LVI.

CONVEYANCE BY TRUSTEES AND CESTUIS QUE TRUST.

CONVEYANCE *of* FREEHOLDS *by* TRUSTEES *under a* TESTAMENTARY TRUST *for* SALE. *The* CESTUIS QUE TRUST *join so as to make themselves liable to* STATUTORY COVENANTS *for* TITLE (*b*).

Parties.

THIS INDENTURE, made, &c., BETWEEN A. B. of, &c., and C. D. of, &c. (*trustees for sale*), of the first part, E. F. of, &c.,

(*a*) It is apprehended that as the sale monies are to be applied in payment of debts and legacies, the consent of the beneficiary for life of the residue is not necessary under sec. 56 of the Settled Land Act, 1882, sub-sec. 2.

(*b*) It is usual, however, when trustees have an effectual power of sale, to stipulate that the concurrence of the *cestuis que trust* shall not be required.

and G. H. of, &c. (*parties beneficially interested in the monies to be produced by the sale*), of the second part, and M. N. of, &c. (*purchaser*), of the third part (*Recite will of O. P., whereby he devised* (*inter alia*) *the hereditaments hereinafter described unto and to the use of the said A. B. and C. D., their heirs and assigns, upon trust to sell and to apply the monies to arise therefrom upon trust to pay the testator's debts, and the legacies bequeathed by his will, and to stand possessed of the residue of the said monies in trust for his the said testator's children equally, who being a son or sons should attain the age of twenty-one years, and being a daughter or daughters should attain that age or marry, and if more than one in equal shares,—death of testator and probate of his will*) : AND WHEREAS, pursuant to the trust for this purpose contained in the said recited will as aforesaid, the said A. B. and C. D. have agreed to sell the hereditaments hereinafter described to the said M. N. at the price of £——: AND WHEREAS there were issue of the said testator living at his death two children and no more, namely, the said E. F. and G. H., and the said E. F. and G. H. have respectively attained the age of twenty-one years: AND WHEREAS for the satisfaction of the said M. N. the said E. F. and G. H. have consented to join in these presents in manner hereinafter mentioned: NOW THIS INDENTURE WITNESSETH, that in consideration of the sum of £—— to the said A. B. and C. D. paid by the said M. N. on or before the execution of these presents, with the privity of the said E. F. and G. H., (*the receipt, &c.*), THE said A. B. and C. D. as trustees, by the direction of the said E. F. as beneficial owner as regards one undivided moiety of the hereditaments hereinafter described, and by the direction of the said G. H. as beneficial owner as regards the other undivided moiety thereof, hereby convey, and the said E. F. and G. H. hereby confirm unto the said M. N., ALL, &c. (*parcels*) *habendum to M. N. in fee simple.*

IN WITNESS, &c.

CONVEYANCE BY TRUSTEES AND CESTUIS QUE TRUST.

Agreement by trustees for sale.

That there were issue two children who have attained twenty-one.

Agreement by children to join.

Conveyance by trustees,

and confirmation by cestuis que trust.

No. LVII.

CONVEYANCE UNDER TESTAMENTARY TRUST—CESTUIS QUE TRUST, HAVING VARIOUS INTERESTS, JOIN.

CONVEYANCE *under a* TESTAMENTARY TRUST *for* SALE *by* NEW TRUSTEES *appointed under a* POWER *in the* WILL—CESTUIS QUE TRUST *being* NUMEROUS, *and having* VARIOUS INTERESTS, *join so as to make themselves liable to* STATUTORY COVENANTS *for* TITLE—*and* TRUSTEES GIVE ACKNOWLEDGMENT *and* UNDERTAKING *for* PRODUCTION *of* DEED POLL.

Parties. THIS INDENTURE, made, &c., BETWEEN A. B. of, &c., and C. D. of, &c. (*trustees*), of the first part (*persons beneficially interested in the proceeds of the sale being very numerous, and having various interests*), of the second part, and M. N. of, &c. (*purchaser*), of the third part (*Recite will of O. P. devising the property to A. B. and X. Y., in trust for sale, and directing the trustees to stand possessed of the net proceeds upon trusts creating various interests, and power to appoint new trustees,—death of testator and probate of will*): AND WHEREAS by a deed poll dated the —— day of ——, under the hand and seal of the said X. Y., the said X. Y. disclaimed all real and personal estate devised and bequeathed by the said will, and all trusts, powers, and authorities whatsoever by the said will reposed in and given to him jointly with the said A. B., and all rights and privileges relating thereto: AND WHEREAS by an indenture dated, &c., and made, &c., the said C. D. was in exercise of the power in that behalf so as aforesaid contained in the said will, duly appointed to be a trustee of the said will in the place of the said X. Y.; and by the said indenture, all the real and personal estate by the said will devised and bequeathed unto and to the use of the said A. B. and X. Y., as aforesaid, was conveyed and assigned so as to become vested in the said A. B. and C. D., upon the trusts declared thereof by the said will (*Recite agreement for sale by A. B. and C. D., and agreement by "the several persons parties hereto of the second part," to join, suprà*, p. 289): NOW THIS INDENTURE WITNESSETH, that in consideration, &c., (*the receipt, &c.*) the said A. B. and C. D. as trustees by the direction of the several persons parties hereto of the second part as beneficial owners,

Recite will and death of testator.

Disclaimer by trustee.

Appointment of new trustee.

Witnessing part.

each of whom shall be deemed to direct as beneficial owner to the extent only of a share and interest in the said hereditaments corresponding with his or her beneficial interest in the proceeds thereof as hereinbefore appears, do hereby convey, and the said several persons parties hereto of the second part, do hereby respectively confirm unto the said M. N., ALL, &c. (*parcels, &c., habendum to M. N. in fee simple*): AND THE SAID A. B. and C. D. hereby acknowledge the right of the said M. N. to production of the said recited deed poll and indenture dated respectively the —— day of —— and the —— day of —— and to delivery of copies thereof, and hereby undertake for the safe custody thereof (*a*).

CONVEYANCE UNDER TESTAMENTARY TRUST—CESTUIS QUE TRUST, HAVING VARIOUS INTERESTS, JOIN.

Conveyance by vendors to purchaser in fee.

Acknowledgment and undertaking by vendors for production of recited deeds.

IN WITNESS, &c.

No. LVIII.

CONVEYANCE *of* FREEHOLDS *by* TRUSTEES *for* SALE—*one of the Trustees being the* PURCHASER, *with the* CONSENT *of the persons beneficially* INTERESTED *in the* SALE MONIES.

TO ONE OF SEVERAL TRUSTEES FOR SALE WITH CONSENT OF BENEFICIARIES.

THIS INDENTURE, made the —— day of ——, BETWEEN A. B. of, &c., and C. D. of, &c. (*trustees for sale*), of the first part, E. F. of, &c., G. H. of, &c., and L. M. of, &c. (*the persons beneficially interested in the sale monies*), of the second part, and the said C. D. (*purchaser*), of the third part: WHEREAS O. P., late of, &c., deceased, duly made his will dated, &c., and thereby devised all his real estate to the said A. B. and C. D., their heirs and assigns, upon trust to sell the same by public sale or private contract, and to stand possessed of the monies arising from such sale in trust thereout in the first place to pay the costs and expenses attending such sale, and to invest the residue of the said monies as in the said will is mentioned, and to pay the income of the said residuary monies, stocks, funds and securities to the said E. F., the wife of the said testator, during her life,

Parties.

Recite will devising real estate to trustees in trust to sell and to hold proceeds

in trust for wife for life,

(*a*) It is considered that trustees ought to give this undertaking. See p. 211 *supra*.

TO ONE OF SEVERAL TRUSTEES FOR SALE WITH CONSENT OF BENEFICIARIES.

and the said testator by his said will declared that after the decease of the said E. F. the said residuary monies, and the stocks, funds, and securities in which the same might be invested, should go and be in trust for all the children of the said O. P., who being sons should attain the age of twenty-one years, or being daughters, should attain that age or marry, in equal shares, as tenants in common, and the said testator appointed the said A. B. and C. D. executors of his said will (*Death of O. P., and probate of his will*): AND WHEREAS there were issue of the said O. P. living at his decease, two children, and no more, namely, the said G. H. and L. M., both of whom have attained the age of twenty-one years: AND WHEREAS the hereditaments hereinafter described form a portion of the real estate devised by the said recited will as aforesaid: AND WHEREAS the said A. B. and C. D. have proposed to exercise the trust for sale contained in the said recited will as to the hereditaments hereinafter described, so that the said C. D. shall be the purchaser thereof at the price of £——: AND WHEREAS the said E. F., G. H., and L. M. have satisfied themselves that the sum of £—— is the full value of the said hereditaments, and are desirous that the said C. D. shall be the purchaser thereof at that sum according to the aforesaid proposal, and have therefore agreed to join in these presents in manner hereinafter mentioned: NOW THIS INDENTURE WITNESSETH, that in consideration of the sum of £—— to the said A. B. and C. D. as such trustees of the said recited will as aforesaid, paid by the said C. D., on or before the execution of these presents, at the request of the said E. F., G. H., and L. M. (*the receipt, &c.*), the said A. B., as trustee, doth hereby convey, and each and every of them the said E. F., G. H., and L. M., as to a share and interest in the said hereditaments corresponding to her and his beneficial share and interest in the proceeds thereof, as beneficial owner, hereby conveys and confirms unto the said C. D., ALL (*parcels*), TO HOLD the same unto and to the use of the said C. D., in fee simple.

and after decease of wife, in trust for children equally.

That testator left only two children.

That hereditaments form part of real estate comprised in will.

Proposal that one of the trustees shall purchase.

Persons interested in proceeds assent to proposal.

Consideration.

Trustees at request of cestuis que trust of monies convey,

and cestuis que trust confirm

parcels.

To grantee to use of the purchaser in fee.

IN WITNESS, &c.

No. LIX.

CONVEYANCE *by* TRUSTEES *under a* POWER *of* SALE *in a* SETTLEMENT *at the request of the* TENANT *for* LIFE, *and with the* CONSENT *of his* MORTGAGEE (*a*).

CONVEYANCE BY TRUSTEES UNDER POWER IN SETTLEMENT AT REQUEST OF TENANT FOR LIFE, AND WITH CONSENT OF MORTGAGEE.

THIS INDENTURE, made the —— day of ——, BETWEEN A. B. of, &c., and C. D. of, &c. (*trustees*), of the first part, E. F. of, &c. (*tenant for life*), of the second part, G. H. of, &c. (*mortgagee*), of the third part, and I. K. of, &c. (*purchaser*), of the

Parties.

(*a*) When a power of sale and exchange is to be exercised by trustees with the consent of the tenant for life, it is important to ascertain that the tenant for life has done no act to suspend or extinguish the power, or rather no act to prevent him from giving the consent which it is necessary for the trustees to obtain, in order to exercise the power. A mortgage by a tenant for life does not prevent his consenting to an exercise of the power, provided he obtains the concurrence of the mortgagee. (Walmisley *v.* Butterworth, Sug. Pow. 64, 7th ed.) And it has recently been decided that an absolute alienation by the tenant for life of his life estate does not prevent his giving the required consent, provided he obtains also the concurrence of the alienee. (Alexander *v.* Mills, L. R. 6 C. A. 124.) So also if the tenant for life becomes bankrupt, the power may be exercised with the united consent of the bankrupt and the trustee in bankruptcy of the estate. (Holdsworth *v.* Goose, 29 Beav. 111.) In a case where trustees of a marriage settlement were empowered to invest the trust monies in land, and to resell the land with the consent of the tenant for life, it was held that the tenant for life's power to consent to a resale of the lands which the trustees purchased, was not destroyed by the absolute alienation by the tenant for life of all his life estate in the monies and securities, and the hereditaments into which the monies, stocks, funds, and securities were or at any time thereafter might be converted and changed. (Warburton *v.* Farn, 16 Sim. 625.) The concurrence of the protector of a settlement in a disentailing assurance, in which his own life estate is reserved, will not destroy his right of consenting to the exercise of a power of sale under the settlement. (Hill *v.* Pritchard, Kay, 394.)

Powers of sale and exchange when affected by disposition of estate of tenant for life.

When a power of sale is to be exercised with consent, the better opinion is that the consent must be given to the particular sale, and that a general prospective consent to a sale would be insufficient. Where, however, the donee of a power is authorised to sell by auction with consent, a direction by the consenting party that the property be sold by auction is sufficient; for such a direction amounts to a consent to a sale to the purchaser at the particular price at which the property should be knocked down to him at the auction, and this is all which could possibly be done in such a case. If the donee of a power enters into a contract for sale before obtaining the requisite consent, the purchaser will be bound if the consent is obtained before a bill is filed by the vendor for specific performance. (Adams *v.* Brooke, 1 Yo. & C. N. C. 627.) Under the 16 & 17 Vict. c. 70, ss. 136, 137, if a consenting party becomes a lunatic, the committee can consent by direction of the Lord Chancellor.

Consent how to be given.

CONVEYANCE BY TRUSTEES UNDER POWER IN SETTLEMENT AT REQUEST OF TENANT FOR LIFE, AND WITH CONSENT OF MORTGAGEE.

fourth part: WHEREAS by an indenture dated the —— day of ——, and made, &c. (being a settlement made in contemplation of the marriage then intended and shortly afterwards solemnized between the said E. F. and L. M., spinster, now L. his wife), the hereditaments hereinafter described were (with other hereditaments) conveyed to the use of the said E. F. and his assigns during his life without impeachment of waste (*b*), with divers remainders over: AND in the said inden-

Tenant for life without impeachment of waste.

(*b*) A tenant for life *without impeachment of waste* is entitled to cut down all the timber upon the estate except such as was planted or was left standing for the ornament or shelter of the mansion-house or residence. Previously to the Judicature Act, 1873, it was within his legal power to fell the ornamental timber, but a Court of Equity would not permit him to make, as it is termed, an unconscionable use of this power, and would therefore restrain him not only from felling such timber (Rolt *v.* Lord Somerville, 2 Eq. Ca. Abr. 759); but also from pulling down the mansion-house, farm-houses, and other buildings on the estate (Vane *v.* Lord Barnard, 2 Vern. 738; Aston *v.* Aston, 1 Ves. 265), or from cutting saplings or young trees not fit to be cut for the purpose of timber (Chamberlayne *v.* Dummer, 1 Br. C. C. 166), or underwood of insufficient growth (Brydges *v.* Stephens, 6 Madd. 279), or from destroying the underwood, or from grubbing up a wood that is settled (Aston *v.* Aston, *ubi suprà*). Any such unconscionable use of the legal power is termed *equitable waste* (Micklethwait *v.* Micklethwait, 1 De G. & J. 104). And under the Judicature Act, 1873, a tenant for life without impeachment of waste has no *legal* right to commit equitable waste.

When the cutting of ornamental trees is equitable waste.

In order to make the cutting of ornamental trees equitable waste they must be connected with a mansion-house or residence. It follows that if the settlor or testator prior to the settlement pulls down the mansion-house with no intention of rebuilding it, and without showing by the settlement or will that he contemplated future building upon the estate, as by the insertion of powers to grant building leases, the timber will not be protected. (Micklethwait *v.* Micklethwait, *ubi suprà*; Wellesley *v.* Wellesley, 6 Sim. 497; Morris *v.* Morris, 15 Sim. 505.)

When ornamental trees may be cut.

If the ornamental trees are so near to the house as to be prejudicial to its healthiness, or are so placed as to injure or impede the growth of any other trees adjoining thereto, which are of so much importance to the purposes of ornament or shelter, that the removal of the timber is essential to such purposes of ornament or shelter, their removal will be justified. (Lushington *v.* Boldero, 6 Madd. 149; Campbell *v.* Allgood, 17 Beav. 623.) There are other cases in which the felling of ornamental timber by a tenant for life will be regarded with approval, "for," to use the words of Sir W. Grant, "if a tempest had produced gaps in a piece of ornamental planting, by which unequal and discordant breaks and divisions were occasioned, it would be going too far to hold that cutting a few trees to produce an uniform and consistent instead of an unpleasant and disjointed appearance should be construed waste." (Lord Mahon *v.* Lord Stanhope, 3 Madd. 523.)

Proceeds of ornamental timber cut by order of Court.

Whenever ornamental timber is cut by the order of the Court during the life of a tenant for life without impeachment of waste or is rightfully cut by him, it seems clear that the proceeds will be his absolute property (Yool on Waste, p. 50); and although in strictness the Court is the only proper judge of what ought to be cut when the consent of the persons

ture is contained a power enabling the said A. B. and C. D., and the survivor of them, and the executors or administrators of

CONVEYANCE BY TRUSTEES UNDER POWER IN SETTLEMENT AT REQUEST OF TENANT FOR LIFE, AND WITH CONSENT OF MORTGAGEE.

entitled in remainder cannot be obtained, yet every tree which the tenant severs upon his own responsibility, and the severance of which would have been approved if application had been made to the Court for the authority, is regarded for this purpose as rightfully cut. (Waldo *v.* Waldo, 12 Sim. 107 ; Baker *v.* Sebright, 13 Ch. D. 179.) A tenant for life without impeachment of waste will also be absolutely entitled to the produce of all timber blown down by the wind.

If ornamental timber is wrongfully cut, the tenant will not be allowed to derive any advantage from his wrongful act, but the proceeds must be invested and accumulated for the benefit of those entitled in remainder. (Lushington *v.* Boldero, 15 Beav. 1 ; Yool, 48.)

As to ornamental timber wrongfully cut.

In judging whether timber is ornamental in the equitable sense, it must be borne in mind that it is not protected because it is ornamental, but because it was planted or left standing for ornament. (Coffin *v.* Coffin, 6 Madd. 17.) The taste of the settlor or author of the interest created, and not that of the tenant for life or of the Court, must determine the question. In Marquis of Downshire *v.* Lady Sandys (6 Ves. 107, 110), where the Court granted its protection to clumps of firs on a common two miles from the house, although the lands of other persons separated the residence from the common, Lord Eldon made the following remarks :—"The principle," he says, "upon which the Court has gone seems to be, that if the testator or author of the interest by deed had gratified his own taste by planting for ornament, though he had adopted the species the most disgusting to the tenant for life and the most agreeable to the tenant in tail, and upon a competition between the parties the Court should see that the tenant for life was right and the other wrong in point of taste, yet the taste of the testator, like his will, binds them." "The principle has been extended from the ornament of the house to outhouses and grounds, then to plantations, vistas, avenues, and to all the rides about the estate for ten miles round." The prohibition above mentioned extends to all trees planted for ornament or shelter by the tenant for life himself. (Coffin *v.* Coffin, Jac. 71.)

To be ornamental, it must have been planted or left standing for ornament.

A tenant in tail in possession is entitled, without executing a disentailing assurance, to exercise absolute ownership over the buildings and timber on the estate. He may, therefore, pull down the mansion-house or other buildings and fell all the timber, whether it was or was not planted or left standing for ornament or shelter. He is, in a word, neither responsible for legal nor for equitable waste. Even if the estate tail had been created by statute, under which the tenant is prohibited from barring the entail and the remainders over, he will not be responsible for any kind of waste, unless the statute also provides for the maintenance of the residence. (Attorney-General *v.* Duke of Marlborough, 3 Madd. 532.)

Powers of tenant in tail as to the cutting of timber.

A tenant in tail after possibility of issue extinct, and a tenant in fee with an executory devise over in the event of his dying without leaving issue, have respectively the same privileges as a tenant for life without impeachment of waste, *i.e.*, they are liable for equitable but not for legal waste. (Williams *v.* Williams, 15 Ves. 428 ; Turner *v.* Wright, 2 De G. F. & J. 234.)

Tenant in tail after possibility of issue extinct.

It remains to be considered what is the position of a tenant for life who is impeachable for waste as to the timber and other wood on the estate. First, then, if the trees are severed, or a house is destroyed, by tempest or other accident, or by a trespasser, the things so severed and destroyed will become the property of the owner of the first vested estate of inheritance (Bewick *v.* Whitfield, 3 P. Wms. 268) ; and that notwithstanding that there

Position of tenant for life who is not made unimpeachable for waste as to right to timber and other wood.

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such survivor, at the request of the said E. F. during his life, to sell the hereditaments thereby settled, either together, &c.

may be an intermediate estate limited to a person for life without impeachment of waste. (Pigott *v.* Bullock, 1 Ves. jun. 484.) Secondly, if there are any trees which are decayed (unless they are required for the defence and shelter of the house or for ornament, see Bewick *v.* Whitfield, *ubi suprà*), or if there are trees the standing of which is injurious to others, it was the practice of the Court before the Settled Land Act, 1882, to order them to be felled and the proceeds to be invested to follow the uses of the settlement, and to direct the income of such proceeds to be paid to the tenant for life (Tooker *v.* Annesley, 5 Sim. 237; Seagram *v.* Knight, L. R. 2 C. A. 628); and if the property was limited after the estate of the first tenant for life to a second tenant for life without impeachment of waste, such second tenant was entitled to the corpus of the proceeds, if he survived the tenant in possession. (Waldo *v.* Waldo, 12 Sim. 107; Lowndes *v.* Norton, 6 C. D. 139.) If the tenant for life felled trees upon his own responsibility (Prescott *v.* Prescott, 3 Atk. 95), it was the rule of the Court, before the Settled Land Act, 1882, to allow him the income of the proceeds of all the felled timber which the Court would have ordered to be cut, if application to the Court had been made for the purpose. (Waldo *v.* Waldo, *ubi suprà*.) It is now provided by the Settled Land Act, 1882, sec. 35, that where a tenant for life is impeachable for waste in respect of timber, and there is on the settled land timber ripe and fit for cutting, he may on obtaining the consent of the trustees of the settlement or an order of the Court cut and sell that timber or any part thereof. Three fourth parts of the net proceeds of the sale are to be set aside as capital, and the other fourth part will belong to the tenant for life as rents and profits. Thirdly, as to timber wrongfully cut by a tenant for life who is impeachable for waste, the owner of the first vested estate of inheritance in remainder is entitled to the proceeds. (See 1 White & Tudor's Leading Cases in Equity, 765, 4th edit.; Cavendish *v.* Munday, W. Notes, 1877, p. 198, in which case the Master of the Rolls expressed his disapproval of the doctrine laid down by the late Lord Romilly, in Bagot *v.* Bagot, 32 Beav. 523; Honeywood *v.* Honeywood, L. R. 18 Eq. 306.)

Permissive waste.

A Court of Equity (and consequently the High Court of Justice since the Judicature Act) will not interfere to prevent or to remedy permissive waste on the part of a tenant for life or for years (Marquis of Lansdowne *v.* the Marchioness Dowager of Lansdowne, 1 J. & W. 522; Wood *v.* Gaynon, Amb. 395; Powys *v.* Blagrave, 4 De G. M. & G. 448). But it would be otherwise where the premises are devised to the tenant for life, subject to a proviso that he should keep them in repair (Woodhouse *v.* Walker, 5 Q. B. D. 404).

As to what wood an ordinary tenant may cut.

Although a tenant for life or years who is impeachable for waste is not allowed, as a rule, to fell any of the timber on the property, he has some positive powers of cutting wood that are incident to his estate, which must be mentioned here. For instance, he may cut or lop hedges, bushes, trees, &c., which are not timber, for his own benefit in a reasonable manner, but not so as to prevent the future growth; and he may take sufficient wood to repair the walls, pales, fences, hedges, and ditches as he found them, and he may take for agricultural and household purposes what is known as plowbote, firebote, and housebote. (Yool, pp. 23, 26; Phillips *v.* Smith, 14 M. & W. 589.) He may also cut timber for the necessary repairs of the house. (Eden on Injunctions, 146.)

In Pidgley *v.* Rawling (2 Coll. 275), it was held that, as between the tenant for life and remainder-man, the thinnings of fir trees under twenty years old belong to the former; and it is now settled that all timber cut in the regular course of thinning, and all coppices cut periodically in the nature of crops, and all trees felled by the wind which the tenant might

CONVEYANCE BY TRUSTEES UNDER POWER IN SETTLEMENT AT REQUEST OF TENANT FOR LIFE, AND WITH CONSENT OF MORTGAGEE

(recite power of sale and to revoke uses, or any part thereof, as in settlement) : AND WHEREAS by an indenture dated, &c., and made between the said E. F. of the one part, and the said G. H. of the other part, the hereditaments hereinafter described were (with other hereditaments) demised by the said E. F. unto the said G. H., for the term of ninety-nine years, if the said E. F.

have cut, are to be regarded as income, and consequently belong to a tenant for life, who is impeachable for waste, as his absolute property. (Bateman *v.* Hotchkin, 31 Beav. 486 ; Earl Cowley *v.* Wellesley, L. R. 1 Eq. 657 ; Honeywood *v.* Honeywood, *ubi suprà*.)

Cholmondeley *v.* Paxton.

A tenant for life without impeachment of waste acquires a property in the timber only in the event of its being actually felled by him during the continuance of his estate. Consequently, when, as in the precedent in the text, the sale is made by the trustees with the consent of the tenant for life, no portion of the purchase-money can be paid to the tenant for life on account of any unfelled timber, and after he has given his consent to the sale it would clearly be waste for him to fell a single tree on the estate. (Cholmondeley *v.* Paxton, 3 Bing. 207 ; 22 & 23 Vict. c. 35, s. 13.)

Mortgage by tenant for life.

Legal and equitable remedies for waste.

In the case of waste by a tenant in possession the legal remedy before the passing of the Judicature Act was generally incomplete, as the action could only be brought by the person entitled to the immediate reversion or remainder in fee or in tail, so that if there was an existing intermediate estate for life, the action would not lie until after the death of the second tenant for life. Besides this, at law the only redress was for injury already sustained, and the action could not be used for the purpose of restraining future waste. The equitable remedy by bill for an injunction against future waste, as well as for an account for past damage, was therefore necessary to give complete satisfaction. A Court of Equity allowed the plaintiff by bill, whilst applying for an injunction, to ask also for an account for past waste, to prevent a multiplicity of suits.

The jurisdiction of Courts of Equity now belongs to every branch of the High Court of Justice, and all the remedies which could be obtained in equity as regards waste can now be obtained in an action under the new procedure.

When there is waste in mines, the Court will grant an account, although the bill does not pray for an injunction, because the digging of mines is a sort of trade. (Bishop of Winchester *v.* Knight, 4 P. Wms. 406 ; Jesus College *v.* Bloome, Amb. 55.) A second tenant for life may proceed against the tenant in possession who has committed waste, for an injunction to restrain him against future waste. (Pigott *v.* Bullock, *ubi suprà*.)

When Statute of Limitations begins to run.

When timber is wrongfully cut by a tenant for life, the Statute of Limitations begins to run from the time of cutting, and not from the death of the tenant (Seagram *v.* Knight, L. R. 2 C. A. 628 ; Higginbotham *v.* Hawkins, *ubi suprà*), unless he is the owner of the first estate of inheritance, in which case the claim against his estate may be made at any time within six years from his death. (Birch-Wolfe *v.* Birch, L. R. 9 Eq. 683.)

Common law rule as to timber on glebe.

Rector's powers to cut for repairs.

At common law, the parson, with the consent of the patron and ordinary, might direct the timber on the glebe to be cut (Duke of Marlborough *v.* St. John, 5 De G. & Sm. 174 ; Yool, 71) ; but not, it seems, with the consent of the patron only. A rector in the ordinary way is entitled to cut timber for the repair of the parsonage house and the barns and outhouses belonging thereto, and of the chancel, and also for the repair of old pews belonging to

CONVEYANCE BY TRUSTEES UNDER POWER IN SETTLEMENT AT REQUEST OF TENANT FOR LIFE, AND WITH CONSENT OF MORTGAGEE.

should so long live, by way of mortgage for securing the payment to the said G. H. of the sum of £——, with interest thereon: AND WHEREAS the said principal sum of £—— still remains owing to the said G. H. upon the security of the last hereinbefore recited indenture: AND WHEREAS, in exercise of the said power contained in the said indenture of settlement, the said A. B. and C. D., at the request of the said E. F., and with the privity and consent of the said G. H., have agreed, &c. (*Agreement for sale to I. K.*): NOW THIS INDENTURE WITNESSETH, that in consideration, &c. (*the receipt, &c.*), THE said A. B. and C. D., as trustees, in exercise of the power for this purpose vested in them by the said recited indenture of the —— day of —— as aforesaid, and of all other powers (if any) them hereunto enabling, and by the direction of the said E. F., as beneficial owner, and with the consent of the said G. H., as mortgagee, HEREBY REVOKE and make void the uses, trusts, powers, provisoes, and declarations by and in the last-mentioned indenture declared and contained of and concerning the hereditaments intended to be hereby appointed, AND HEREBY APPOINT that ALL, &c. (*parcels*), shall henceforth go, remain, and be to the use of the said I. K., in fee simple: AND THE SAID E. F. hereby acknowledges the right of the said I. K. to production of the said recited indenture of settlement, and to delivery of copies thereof, and hereby undertakes for the safe custody thereof (*c*).

Agreement for sale.

Witnessing part.

Trustees revoke uses of settlement,

and appoint parcels to purchaser in fee.

IN WITNESS, &c.

the rectory, but for no other purpose. (Sowerby *v.* Fryer, L. R. 8 Eq. 417; Yool on Waste, pp. 75, 76.)

What a nurseryman may remove.

Where a nurseryman or gardener plants trees and shrubs in the regular course of his trade, he may remove them at any time during his tenancy, provided they are not of larger growth than can be dealt with by him in his trade as a nurseryman or gardener. (Wardell *v.* Usher, 3 Scott's New Rep. 508.)

(*c*) In this case E. F. is supposed to have been the settlor, as well as the tenant for life, and will be liable under the statutory covenant for title as if he had been beneficial owner in fee simple. If E. F. had not been the settlor, the following proviso should have been introduced at the end of the deed:—

Proviso when the tenant for life is not the settlor.

"Provided always that as respects the reversion or remainder, expectant on the life estate of the said E. F. of and in the hereditaments and premises hereby appointed his covenants for title implied by law shall not extend to the acts, deeds, or defaults of any person or persons other than and besides himself and persons claiming or to claim under or in trust for him." (See 1 Dart, V. & P. 502.)

No. LX.

CONVEYANCE *of* FREEHOLDS *which are the subject of* SETTLEMENT *by the* TENANT *for* LIFE (*a*) *under the* POWERS *of the* SETTLED LAND ACT, 1882 (*b*).

CONVEYANCE OF FREEHOLDS BY TENANT FOR LIFE UNDER POWERS OF SETTLED LAND ACT.

THIS INDENTURE, made the —— day of ——, BETWEEN A. B., of, &c. (*tenant for life*), of the first part, C. D., of, &c., and E. F., of, &c. (*trustees*), of the second part, and X. Y., of, &c. (*purchaser*), of the third part: WHEREAS, by an indenture dated, &c., and made, &c., being a settlement made in contemplation of the marriage then intended and shortly afterwards solemnized between the said A. B. and L. M., spinster, now L. his wife, the hereditaments hereinafter described were (with other hereditaments) conveyed to the use of the said A. B. during his life, with divers remainders over, and by the said indenture the said C. D. and E. F. were empowered to sell the hereditaments thereby settled, or any of

Parties.

Recite indenture of settlement.

(*a*) If the tenant for life is a married woman, and she is entitled for her separate use, whether with or without restraint on anticipation, the conveyance will be in the same form as No. LX., substituting "she" for "he" and "her" for "him," when necessary. If she is not so entitled, she and her husband will convey together as beneficial owners, but the deed need not be acknowledged (sec. 61).

Form of conveyance where tenant for life is married woman.

(*b*) By the 3rd section of the Settled Land Act, 1882 (which is set out at length in the Appendix to Vol. II.), a tenant for life in possession is empowered to sell the settled land or any easement or privilege over or in relation to the same, or to make any exchange of such land for any other land, including an exchange in consideration of money paid for equality thereof, and to convey the property sold or exchanged, discharged from the provisions of the settlement (sec. 20). The purchase-money must be paid either to the trustees of the settlement or into Court, at the option of the tenant for life. If it is paid to the trustees the investment thereof must be made by them according to the direction of the tenant for life, and, in default thereof, according to their own discretion (sec. 22).

Powers conferred on the tenant for life by Settled Land Act.

The power of the tenant for life to sell or exchange includes a power to enter into a contract for this purpose (sec. 31).

The tenant for life is required to send by registered letters notice of his intention to make a sale or exchange to each of the trustees and their solicitor one month before he makes the sale or exchange or enters into a contract for the same, yet so that a person dealing in good faith with the tenant for life is not concerned to inquire whether the notice has been given (sec. 45).

Notice required to be given by tenant for life of intention to sell.

If the estate for life of the tenant has been mortgaged or absolutely disposed of, he is prevented from exercising his powers so as to affect the rights of the mortgagee or assignee without his consent (sec. 50).

As the 56th section provides in effect that express powers of sale and exchange contained in a settlement and the powers provided by the Act shall be cumulative, it follows that when any such express power exists, the sale may be effected either by the trustees at the request of the tenant for life, *or* by the tenant for life himself he giving to the trustees and their solicitor

As to the exercise of express powers of sale in settlement.

CONVEYANCE OF FREEHOLDS BY TENANT FOR LIFE UNDER POWERS OF SETTLED LAND ACT.

them, upon the request of the said A. B. during his life (*c*): AND WHEREAS the said A. B. has agreed to sell to the said X. Y. the hereditaments hereinafter described at the price of £—— (*d*): NOW THIS INDENTURE WITNESSETH, that in consideration of the sum of £—— to the said C. D. and E. F. as such trustees as aforesaid paid by the said X. Y. on or before the execution of these presents, by the direction of the said A. B., the said A. B., in exercise of the power for this purpose vested in him by the Settled Land Act, 1882, and of all other powers (if any) him hereunto enabling, and as beneficial owner, hereby conveys unto the said X. Y. ALL, &c. (*parcels*), TO HOLD the same unto and to the use of the said X. Y. in fee simple: AND THE SAID A. B. hereby acknowledges the right of the said X. Y. to production of the said indenture of settlement, and to delivery of copies thereof, and hereby undertakes for the safe custody thereof. (*Proviso as to covenants for title when the tenant for life is not the settlor, suprà, p.* 298.)

Agreement for sale.

Consideration.

Tenant for life conveys freeholds to purchaser

freed from provisions of settlement.

IN WITNESS, &c.

the notice required by the 45th section. Since, however, no sale could properly be made nor any contract be properly entered into under the powers contained in the Act until a month shall have elapsed after the service of the notice referred to, and in the event of there being no trustee or only one it might be necessary to wait until a month after the number of the trustees had been raised to two unless a contrary intention is expressed in the settlement (see sec. 45, sub-sec. 2), it is probable that where the settlement contains an express power, the sale will sometimes by preference be made thereunder so as to enable the parties to enter into a contract for sale without delay. See Vol. II., pp. 212, 213.

The powers of a tenant for life under the Act are extended to the several other persons enumerated in the 58th section when their respective estates are in possession.

Definition of persons who are trustees.

(*c*) The persons, if any, who are for the time being under a settlement trustees with power of sale of the settled land, or with power of consent to or approval of the exercise of such a power, or if under a settlement there are no such trustees, then the persons, if any, for the time being who are by the settlement declared to be trustees thereof for the purposes of the Act are by sec. 2, sub-sec. 8, declared to be for the purposes of the Act trustees of the settlement. The 38th section empowers the Court where there are no trustees of the settlement, or where in any other case it may be expedient to do so, on the application of the tenant for life or any other person having an interest in the settled land, to appoint trustees, and declares that the persons so appointed, and the survivors and survivor of them, shall be the trustees or trustee of the settlement for the purposes of the Act.

(*d*) It is assumed in the above Precedent that the tenant for life has sent the notice required by sec. 45 of the Settled Land Act, 1882 ; but as the purchaser is exempted from the duty of inquiring respecting the notice, it is not necessary to mention it in the conveyance. If the notice has not in fact been given, the purchaser will have a good title, but the tenant for life will have committed a breach of duty, rendering him liable to damages on the suit of a remainderman.

No. LXI.

CONVEYANCE *of* COPYHOLDS *which are the subject of* SETTLEMENT *by the* TENANT *for* LIFE *under the* POWERS *of the* SETTLED LAND ACT, 1882, *where the* PURCHASE MONEY *is paid into* COURT (*a*).

CONVEYANCE OF COPYHOLDS BY TENANT FOR LIFE UNDER POWERS OF SETTLED LAND ACT.

THIS INDENTURE, made the —— day of ——, BETWEEN A. B., of, &c. (*tenant for life*), of the one part, and X. Y., of, &c. (*purchaser*), of the other part: WHEREAS, G. H., late of, &c., deceased, duly made his will dated the —— day of ——, and thereby he devised all his manors, messuages, lands, tenements, and hereditaments situate in the parishes of —— and ——, in the county of ——, being freehold of inheritance, unto L. M., N. O., and P. Q., in fee simple, To the use, &c. (*that testator's wife should receive a jointure*), and subject thereto, To the use of his eldest son, the said A. B., during his life, without impeachment of waste, with divers remainders over; And the said testator thereby devised all his messuages, lands, tenements, hereditaments, and premises in the parishes aforesaid, being copyhold, unto the said L. M., N. O., and P. Q., in trust, out of the rents and profits of the said copyhold premises, to pay and render the customary rents and services and subject thereto upon such trusts and with and subject to such powers and provisions as would correspond as nearly as the difference of tenure would permit, with the uses, trusts, powers, and provisions thereinbefore declared and contained, concerning the said freehold hereditaments situate in the parishes aforesaid, but so as not to increase or multiply charges or powers of charging: (*Death of testator and probate of his will.*)

Parties.

Recite will devising manor and other hereditaments, being freehold of inheritance.

To use of testator's eldest son for life.

Devise of copyholds upon trusts corresponding with freeholds.

(*a*) The 20th section of the Settled Land Act, 1882, enables the tenant for life to convey the settled copyholds by deed, but provides that such deed shall be entered on the Court Rolls, and that on payment of the customary fines the title of the purchaser shall be perfected by admittance. It follows that the formality of a surrender to the use of the purchaser by the trustees will not be necessary.

CONVEYANCE OF COPYHOLDS BY TENANT FOR LIFE UNDER POWERS OF SETTLED LAND ACT.

That hereditaments to be conveyed form part of settled copyholds.

Agreement for sale by tenant for life.

In consideration of sum paid by purchasers to trustees of settlement.

Tenant for life conveys copyholds to purchaser in customary fee simple.

Order for payment of purchase-money into Court.

Payment of purchase-money into Court pursuant to order.

AND WHEREAS the hereditaments intended to be hereby conveyed are part of the copyhold hereditaments situate in the said parish of ——, to which the said testator was entitled at the time of his decease, as aforesaid, And the said L. M., N. O., and P. Q., as the trustees of the said will, were admitted tenants thereto on the —— day of ——, 18—: AND WHEREAS the said A. B. has agreed to sell to the said X. Y. the said copyhold hereditaments at the price of £——. AND WHEREAS by an order of the High Court of Justice (Chancery Division) dated the —— day of ——, and made on the application of the said X. Y., it was ordered that the said X. Y. should be at liberty to pay into Court to the credit of "In the matter of the will of G. H., dated the —— day of ——, proceeds of the sale of the —— estate, and in the matter of the Settled Land Act, 1882," the sum of £——, on account of the purchase-money of the said —— estate, settled by the said will: AND WHEREAS pursuant to the said order the said X. Y. has paid the said sum of £—— into Court as appears by the receipt of one of the cashiers of the Bank of England and the receipt of the Paymaster-General on behalf of the Court, dated the —— day of ——: NOW THIS INDENTURE WITNESSETH, that in pursuance of the aforesaid agreement, and in consideration of the sum of £—— paid by the said X. Y. as aforesaid, the said A. B., in exercise of the power for this purpose vested in him by the Settled Land Act, 1882, and of all other powers (if any) him hereunto enabling, and as beneficial owner hereby conveys unto the said X. Y., ALL, &c. (*copyhold parcels*), TO HOLD the same unto the said X. Y. in customary fee simple at the will of the lord of the manor of ——, of which the same hereditaments are held according to the custom of the said manor, by and under the rents, suits, and services therefor due and of right accustomed. (*Proviso qualifying statutory covenants for title, suprà*, p. 298.) (*a*).

IN WITNESS, &c.

Form of conveyance by tenant for life of settled leaseholds.

(*a*) A conveyance by a tenant for life of settled leaseholds will contain recitals of the lease, of the settlement of the freeholds conferring a power of sale on trustees and of the leaseholds upon and with corresponding trusts and powers by reference, and of the agreement for sale for the residue of the term; then an assignment of the property to the purchaser for the residue of the said term, *suprà*, p. 237; and lastly a covenant by the purchaser with the tenant for life to pay the rent and observe the lessee's covenants, *suprà*, p. 238. In other respects the form will be the same as No. LX. *suprà*, p. 299.

No. LXII.

CONVEYANCE *of* FREEHOLDS *by the* TRUSTEE *of a* BANKRUPT (*a*).

CONVEYANCE BY TRUSTEE OF BANKRUPT.

THIS INDENTURE, made, &c., BETWEEN A. B. of, &c. (*creditors' trustee of the estate and effects of G. H. of, &c., under an* Parties.

(*a*) The Bankruptcy Act, 1861 (24 & 25 Vict. c. 134), was repealed by the 32 & 33 Vict. c. 83 as from the first of January, 1870, and the law of bankruptcy from that date is regulated by the Bankruptcy Act, 1869 (32 & 33 Vict. c. 71), the 14th section of which provides that the creditors at a general meeting shall by resolution appoint a person to fill the office of trustee of the property of the bankrupt, or they may resolve to leave his appointment to the committee of inspection, and shall by resolution appoint some other persons, not exceeding five in number, and being creditors, to form a committee of inspection, to superintend the administration by the trustee of the bankrupt's property. The 15th section declares that the property of the bankrupt divisible amongst the creditors shall comprise all such property as may belong to or be vested in the bankrupt at the commencement of the bankruptcy, or may be acquired by or devolve on him during its continuance, and also the capacity to exercise powers which the bankrupt might have exercised for his own benefit at the commencement of or during the bankruptcy, except the right of nomination to a vacant ecclesiastical benefice. Provisions of Bankruptcy Act, 1869.

A testamentary power would not, it is apprehended, be a power exercisable for the benefit of the bankrupt within the last-mentioned section. If, however, he exercises the power by his will and dies during the bankruptcy, to the extent to which the power is exercised, the property affected thereby will be assets for the benefit of the creditors thereunder. Sugden on Powers, 188, 8th ed. Jenney *v.* Andrews, 6 Madd. 264. Testamentary power not a power exercisable for benefit of bankrupt.

Until a trustee is appointed by the creditors, the registrar is to be the trustee for the purposes of the Act. Upon the order of adjudication being made, the property of the bankrupt is to vest in the registrar, and on the appointment of a trustee the property is to pass to and vest in the trustee (s. 17). Property vests in trustee on appointment.

By the 83rd section it is provided that the creditors may if they think fit appoint more persons than one to the office of trustee, and that every vacancy in the office of trustee by death, resignation, or otherwise, shall be filled up by the creditors in general meeting.

The 25th section empowers the trustee to deal with any property to which the bankrupt is beneficially entitled as tenant in tail in the same manner as the bankrupt might have dealt with the same; and declares that sections 56 to 73 of the Fines and Recoveries Act (3 & 4 Wm. IV. c. 74) shall extend to proceedings in bankruptcy under the Act. The same section also empowers the trustee to exercise any powers the capacity to exercise which is vested in him under the Act, and to sell all the bankrupt's property by public auction or private contract. Estates tail of bankrupt. Powers.

As to copyhold or customary property, or any like property passing by Copyholds.

CONVEYANCE BY TRUSTEE OF BANKRUPT.

adjudication in the Court of Bankruptcy), of the one part, and C. D. of, &c. (*purchaser*), of the other part: WHEREAS by an order of the London Court of Bankruptcy (*or, as the case*

surrender and admittance, the trustee is empowered to deal with the same as if it had been capable of being and had been duly surrendered or otherwise conveyed to such uses as the trustee may appoint, and any appointee of the trustee is to be admitted accordingly. (s. 22.)

Power to trustee, to disclaim land burdened with onerous covenants, &c.

By the 23rd section it is provided that when any property of the bankrupt acquired by the trustee consists of land of any tenure burdened with onerous covenants, of unmarketable shares in companies, of unprofitable contracts, or of any other property that is unsaleable or not readily saleable, by reason of its binding the possessor to the performance of any onerous act, or to the payment of any sum, the trustee may by writing under his hand disclaim such property, and upon the execution of such disclaimer the property disclaimed shall, if the same is a contract, be deemed to be determined from the date of the order of adjudication, and if the same is a lease, be deemed to be surrendered on the same date, and if the same be shares in any company, be deemed to be forfeited from that date, and if any other species of property, it shall revert to the persons entitled on the determination of the interest of the bankrupt, yet so that any person injured under this section shall be deemed a creditor of the bankrupt to the extent of such injury, and may accordingly prove the same as a debt under the bankruptcy. (See *Ex parte* Llynvi Coal and Iron Company, L. R. 7 C. A. 28; *In re* Wilson, L. R. 13 Eq. 168.) And if any person interested applies to the trustee to decide whether he will disclaim or not, he must do so within twenty-eight days, or such further time as may be allowed him by the Court. (s. 24.) *In re* Richardson, 16 Ch. D. 613.

Effect of disclaimer of lease by trustee.

The 28th rule of the bankruptcy rules, 1871, provides that the trustee shall not execute any disclaimer of a leasehold estate without leave of the Court, and under this rule the Court has power to impose conditions (*Ex parte* Ledbury, 17 Ch. D. 532); but the Court has no power to impose conditions after a disclaimer founded on an unconditional leave (*Ex parte* Sadler, 19 Ch. D. 122). The effect of the rule is to make it the duty of the trustee as between himself and the Court of Bankruptcy to obtain the aid of the Court but not to render the disclaimer invalid, if the leave of the Court is not obtained, as between the landlord and the trustee (Reed *v.* Harvey, 5 Q. B. D. 184.) If the trustee disclaims a lease, he by so doing surrenders his right to remove the tenant's fixtures (*In re* Lavies, 7 Ch. D. 127); and if he removes and sells them and afterwards disclaims the proceeds of the sale belong to the lessor (*Ex parte* Brook, 10 Ch. D. 100; *Ex parte* Glegg, 19 Ch. D. 7; see also *Ex parte* Allen, 20 Ch. D. 341). If, however, the trustee takes possession or performs any other act of ownership, it will be assumed that he has accepted the lease, and in that case he becomes personally liable for the rent accruing due after his appointment, and on the covenants in the lease (Wilson *v.* Wallani, 5 Exch. D. 155; Tillerton *v.* Cooper, 9 Q. B. D. 473. See also Lowrey *v.* Barker, 5 Exch. D. 170 (C. A.)). If an equitable mortgagee intercepts the right of the trustee to disclaim, in the assignment of the lease to him he must indemnify the trustee against the consequences of his retaining the lease up to the date of the assignment (*Ex parte* Buxton, 15 Ch. D. 289). The effect of the disclaimer of a lease, though it may be determined by effluxion of time or forfeiture, is to deprive the lessor and the trustee respectively of the *benefit* of all its provisions (*In re* Morrish, 1 W. N. 1882, p. 180). As to the effect of a disclaimer by the trustee with respect to the rights and liabilities of third parties, see Vol. II. p. 24.

Dealings

Under the 94th and 95th sections all payments, contracts, conveyances,

may be, the County Court of ——), dated the —— day of ——, the said G. H. was adjudged a bankrupt, and the said A. B. was, on or about the —— day of ——, duly chosen trustee of the estate and effects of the said bankrupt: AND WHEREAS the hereditaments hereinafter described were put up for sale by public auction by the said A. B. on the —— day of ——, according to certain printed particulars: AND WHEREAS the said C. D. bid at the said auction the sum of £—— for the said hereditaments, and was declared the purchaser thereof at that price, and thereupon the said C. D. paid to the said A. B. the sum of £—— by way of deposit in part payment of the said purchase money: NOW THIS INDENTURE WITNESSETH, that in consideration of the sum of £—— paid by way of deposit as aforesaid, and also in consideration of the sum of £——, now paid by the said C. D. to the said A. B. (the receipt of which several sums of £—— and £—— making together the said purchase money of £——, the said A. B. hereby acknowledges), the said A. B. as trustee hereby conveys unto the said C. D., ALL, &c. (*parcels*): TO HOLD the same unto and to the use of the said C. D., in fee simple.

Conveyance by trustee of bankrupt.

Sale by auction.

Payment of deposit by purchaser.

Consideration.

Trustee conveys parcels.

IN WITNESS, &c.

or dealings to or with a bankrupt made in good faith and for valuable consideration before the date of the order of adjudication, with any person not having at the time of making such payment, &c., notice of any act of bankruptcy committed by the bankrupt, and available against him for adjudication, are to be valid notwithstanding any prior act of bankruptcy; and by the 78th section it is provided that until rules have been made in pursuance of the Act, and so far as such rules do not extend, the principles, practice, and rules on which Courts having jurisdiction in bankruptcy have heretofore acted in dealing with bankruptcy proceedings shall be observed by any Court having jurisdiction in bankruptcy cases under the Act.

With bankrupt where no notice of act of bankruptcy.

Before the Bankruptcy Act, 1869, the law of bankruptcy was principally regulated by the Bankruptcy Acts, 1849 and 1861 (12 & 13 Vict. c. 106; 24 & 25 Vict. c. 134). By section 117 of the Act of 1861, the real and personal property of the bankrupt vested in the creditor's assignees by their appointment; and by section 127 they were directed to manage and (except as therein mentioned) to realise and recover the estate of the bankrupt, and convert the same into money. As to the copyholds of the bankrupt, by the Act of 1849, section 209, the Court was empowered to sell and by deed enrolled in the Courts of the Manor to convey them and to authorise any person on behalf of the Court of Bankruptcy to surrender the same for the purpose of any purchaser being admitted thereto; and by the Act of 1861 the Court was empowered to make vesting orders of the bankrupt's copyhold land.

Provision before the Bankruptcy Act, 1869.

No. LXIII.

CONVEYANCE BY TRUSTEE OF BANKRUPT WITH CONCURRENCE OF MORTGAGEE.

CONVEYANCE *of* FREEHOLDS *by the* TRUSTEE *of a* BANKRUPT *with the Concurrence of the* MORTGAGEE, *in which the* BANKRUPT JOINS.

Parties.

THIS INDENTURE, made the —— day of ——, BETWEEN O. P. of, &c. (*mortgagee*), of the first part, A. B. of, &c. (*creditors' trustee of the estate and effects of E. F. of, &c., under an adjudication in the Court of Bankruptcy*), of the second part, E. F. of, &c. (*bankrupt*), of the third part, and G. H. of, &c. (*purchaser*), of the fourth part (*Recite mortgage from E. F. to O. P. for £——, and that principal sum is still due with interest from a certain date amounting to £——, suprà*, p. 260,—*adjudication of bankruptcy, and appointment of A. B. to be trustee, suprà*, pp. 304, 305): AND WHEREAS the said A. B., as such trustee as aforesaid, hath agreed to sell to the said G. H., &c. (*Agreement for sale*),—(*Agreement that mortgagee shall be paid his debt out of purchase money, suprà*, p. 260): AND WHEREAS the said E. F. hath consented to join in these presents in manner hereinafter mentioned: NOW THIS INDENTURE WITNESSETH, that in consideration of the sum of £——, to the said O. P. paid by the said G. H., on or before the execution of these presents, by the direction of the said A. B. (the receipt whereof the said O. P. hereby acknowledges), and in consideration of the sum of £—— to the said A. B. at the same time paid by the said G. H. (the payment and receipt of which said sums of £—— and £—— respectively, in manner aforesaid, making together the said purchase money of £——, the said A. B. hereby acknowledges) the said O. P. as mortgagee, by the direction of the said A. B. and E. F., hereby conveys and releases, and the said A. B., as trustee, hereby conveys, and the said E. F., as beneficial owner, hereby confirms unto the said G. H., ALL, &c. (*parcels, estate, &c.*): TO HOLD the same unto and to the use of the said G. H., in fee simple, absolutely freed and discharged from the said mortgage debt of £——, and all interest for the same, and all claims and demands on account thereof.

Agreement for sale.

Witnessing part.

Consideration.

Mortgagee, trustee, and bankrupt convey.

Parcels.

To purchaser in fee.

IN WITNESS, &c.

No. LXIV.

APPOINTMENT *of* COPYHOLDS *by the* TRUSTEE *of a* BANKRUPT.

APPOINTMENT OF COPYHOLDS BY TRUSTEE OF BANKRUPT.

THIS INDENTURE, made the —— day of ——, BETWEEN A. B. of, &c. (*creditors' trustee of the estate and effects of G. H. of, &c., a bankrupt*), of the one part, and C. D. of, &c. (*purchaser*), of the other part: WHEREAS the said G. H. was at the date of his bankruptcy hereinafter mentioned seised of or entitled to the copyhold hereditaments hereinafter described in customary fee simple, according to the custom of the manor of ——, at and under the rents, suits, and services therefor due and of right accustomed: AND WHEREAS, &c. (*Recite order of adjudication and appointment of A. B. to be trustee, suprà*, pp. 304, 305: AND WHEREAS the said A. B., as such trustee as aforesaid, has agreed to sell the said copyhold hereditaments to the said C. D. at the price of £——: NOW THIS INDENTURE WITNESSETH, that in consideration, &c. (the receipt whereof the said A. B. hereby acknowledges), the said A. B., as trustee, in exercise of the power for this purpose vested in him under the Bankruptcy Act, 1869, and of all other powers (if any) him hereunto enabling, hereby appoints that ALL THAT (*parcels as described in the Court Rolls*), to all which hereditaments hereinbefore described the said G. H. was admitted tenant at a court holden in and for the said manor on the —— day of ——, shall henceforth go, remain and be TO THE USE of the said C. D., in customary fee simple at the will of the lord, according to the custom of the said manor, by and under the rents, suits, and services therefor due and of right accustomed.

Parties.

Recital of seisin by bankrupt of copyholds.

Bankruptcy and appointment of trustee.

Agreement for sale.

Witnessing part.

Trustee appoints copyholds to purchaser in fee.

IN WITNESS, &c.

No. LXV.

ASSIGNMENT OF LEASEHOLDS BY TRUSTEE OF A BANKRUPT.

ASSIGNMENT *of* LEASEHOLDS *by the* TRUSTEE *of a* BANKRUPT.

THIS INDENTURE, made the —— day of ——, BETWEEN A. B. of, &c. (*creditors' trustee of the estate and effects of O. P. of, &c., a bankrupt*), of the one part, and C. D. of, &c. (*purchaser*), of the other part: WHEREAS by an indenture of lease dated the —— day of ——, and made between G. H., of the one part, and the said O. P., of the other part, all that messuage or tenement, &c. (*parcels as described in the lease*), were demised by the said G. H. unto the said O. P., his executors, administrators, and assigns, from the —— day of —— then last past, for the term of —— years, at the yearly rent of £——, and subject to the covenants and conditions in the said indenture of lease contained, and on the part of the lessee, his executors, administrators, and assigns, to be observed and performed: (*Recite adjudication in bankruptcy against O. P., and appointment of trustee, suprà*, pp. 304, 305): AND WHEREAS the said A. B. as such trustee as aforesaid hath agreed to sell to the said C. D. the premises comprised in the said indenture of lease for the residue of the said term of —— years subject to the said rent covenants and conditions at the price of £——: NOW THIS INDENTURE WITNESSETH, that in consideration, &c. (the receipt whereof the said A. B. hereby acknowledges), the said A. B. as trustee hereby assigns unto the said C. D., THE messuage and premises demised by the said indenture of lease, TO HOLD the same unto the said C. D., for all the residue now unexpired of the said term of —— years, at the rent reserved by the said indenture of lease, and subject to the covenants and conditions in the same indenture contained, and which henceforth on the part of the lessee ought to be observed and performed (*a*).

Parties.

Recite lease to bankrupt.

Agreement by trustee of bankrupt for sale.

Trustee assigns leaseholds, for residue of term to purchaser.

IN WITNESS, &c.

(*a*) On the sale of leaseholds by the trustee of a bankrupt, the purchaser cannot be required to enter into a covenant to indemnify him or the bankrupt against the payment of the rent, and the observance of the covenants contained in the lease, such a covenant being unnecessary, as the liability ceases on the assignment. (Wilkins *v.* Fry, 1 Mer. 265.)

No. LXVI.

CONVEYANCE *by the* TRUSTEE *of a* BANKRUPT *of a* FREEHOLD ESTATE *to which he was* ENTITLED *for an* ESTATE TAIL *in* POSSESSION.

CONVEYANCE OF ESTATE TAIL IN POSSESSION BY TRUSTEE OF BANKRUPT.

THIS INDENTURE, made the —— day of ——, BETWEEN A. B. of, &c. (*trustee*), of the one part, and C. D. of, &c. (*purchaser*), of the other part: WHEREAS by an indenture dated the —— day of ——, and made between (*parties*), the hereditaments hereinafter described were limited to the use of L. M. for his life, and after his decease to the use of N. O. and the heirs male of his body: AND WHEREAS the said L. M. died on the —— day of ——: AND WHEREAS (*recite adjudication of bankruptcy against N. O., and appointment of trustee.—Sale by auction and payment of deposit, suprà*, pp. 304, 305): NOW THIS INDENTURE WITNESSETH that in pursuance of the said agreement, and in consideration, &c., the said A. B., as trustee, doth by this deed, which is intended to be enrolled in the High Court of Justice (Chancery Division), pursuant to the statute in that behalf, convey unto the said C. D., ALL, &c. (*parcels*): TO HOLD the same unto and to the use of the said C. D. in fee simple, absolutely freed and discharged from the said estate tail of the said N. O. and all remainders, estates, and powers to take effect after the determination or in defeasance of such estate tail.

Parties.

Recite creation of estate tail.

Death of tenant for life.

Trustee conveys the estate to the purchaser in fee.

Discharged from estate tail and remainders over.

IN WITNESS, &c.

No. LXVII.

CONVEYANCE BY TRUSTEE IN BANKRUPTCY OF BASE FEE.

CONVEYANCE *by the* TRUSTEE *of a* BANKRUPT *of a* FREEHOLD ESTATE *to which he was* ENTITLED *for an* ESTATE TAIL *in* REMAINDER.

Parties. THIS INDENTURE, made the —— day of ——, BETWEEN A. B. of, &c. (*trustee*), of the one part, and C. D. of, &c. (*purchaser*), of the other part: WHEREAS by an indenture dated, &c., and made between (*parties*), the hereditaments hereinafter described were limited to the use of L. M. for his life, and after his decease to the use of N. O. and the heirs male of his body: AND WHEREAS (*Recite adjudication of bankruptcy against N. O., and appointment of A. B. as trustee, suprà*, pp. 304, 305): AND WHEREAS the said A. B., as such trustee as aforesaid, hath agreed to sell to the said C. D. the benefit of a base fee in the said hereditaments, at the price of £——: NOW THIS INDENTURE WITNESSETH that in consideration of the sum of £——, to the said A. B. paid by the said C. D. on or before the execution of these presents (*the receipt, &c.*), the said A. B. as trustee doth by this deed which is intended to be enrolled in the High Court of Justice (Chancery Division) pursuant to the statute in that behalf, convey unto the said C. D. ALL, &c. (*parcels*): TO HOLD the same unto and to the use of the said C. D., his heirs and assigns, subject to the life estate therein of the said L. M. freed and discharged from the said estate tail of the said N. O., and to the intent that the same may be hereby converted into a base fee.

Recite creation of estate tail.

Agreement for sale of a base fee in the estate.

Trustee conveys the estate to the purchaser.

Discharged from the estate tail, and to the intent that the same may be converted into a base fee.

IN WITNESS, &c.

No. LXVIII.

CONVEYANCE *of* FREEHOLDS *of a* DEBTOR *by a* TRUSTEE APPOINTED *under the* LIQUIDATION PROVISIONS *in the* BANKRUPTCY ACT, 1869 (*a*).

CONVEYANCE OF FREEHOLDS BY TRUSTEE UNDER LIQUIDATION.

THIS INDENTURE, made the —— day of ——, BETWEEN A. B. of, &c. (*trustee*), of the one part, and C. D. of, &c. (*purchaser*), of the other part: WHEREAS G. H. of, &c., being unable to pay his debts, in the month of —— last presented a petition to the County Court of Somersetshire, holden at ——, for the liquidation of his affairs by arrangement or composition, in pursuance of the provisions in that behalf contained in the Bankruptcy Act, 1869, and at a general meeting of his creditors held on the —— day of —— in accordance with such provisions, it was resolved by the statutory majority of the creditors of the said G. H. that his affairs should be liquidated by arrangement and not in bankruptcy, and that the said C. D. should be, and he was thereby appointed trustee, without a committee of inspection: AND WHEREAS the said special resolution was duly registered on the —— day of ——, in accordance with the provisions of the said Act in this respect (*Recite sale by auction and payment of deposit by purchaser. Conveyance by trustee to purchaser, suprà*, p. 305).

Parties.

Recite that at meeting of creditors it was resolved to wind up affairs by arrangement.

Registration of special resolution.

IN WITNESS, &c.

No. LXIX.

RELEASE *of* EQUITY OF REDEMPTION *to the* MORTGAGEE *by the* TRUSTEE *of a* DEBTOR *whose affairs are in* LIQUIDATION, *in consideration of part of the Mortgage Debt.*

RELEASE OF EQUITY OF REDEMPTION BY TRUSTEE IN LIQUIDATION.

THIS INDENTURE, made the —— day of ——, BETWEEN A. B. of, &c. (*trustee*), of the one part, and C. D. of, &c.

Parties.

(*a*) 32 & 33 Vict. c. 71, sec. 125.

RELEASE OF EQUITY OF REDEMPTION BY TRUSTEE IN LIQUIDATION.

(*mortgagee and purchaser*), of the other part (*Recite mortgage for £5,000 by L. M. to C. D., and liquidation proceedings, as in last precedent*): And whereas the said C. D. proved in the said liquidation for the sum of £5,810, being the amount owing for principal, interest, and costs, and in his proof he valued his said security at £4,000: And whereas the said A. B., as such trustee as aforesaid, has declined to redeem the said security at the sum of £4,000: And it has been agreed between him and the said C. D. that the property comprised therein shall be conveyed to the said C. D., free from all right or equity of redemption therein, in consideration of the sum of £4,000, part of the said mortgage-debt, and that the proof of the said C. D. in the said liquidation shall be reduced by that sum accordingly: NOW THIS INDENTURE WITNESSETH that in consideration of the sum of £4,000, part of the said mortgage-debt, and from which sum of £4,000 the said C. D. hereby releases the estate and effects of the said L. M., the said A. B., as trustee, hereby releases and confirms unto the said C. D., All the hereditaments comprised in the said indenture of mortgage, or which have by any means become subject thereto: To hold the same unto and to the use of the said C. D. in fee simple, freed and discharged from all right or equity of redemption therein.

Recite mortgage and liquidation proceedings

Proof by mortgagee of debt and value of his security,

that trustee has declined to redeem, and agreement to release equity of redemption.

Witnessing part.

Trustee releases equity of redemption to mortgagee.

In witness, &c.

No. LXX.

CONVEYANCE BY DEVISEES UNDER TESTAMENTARY CHARGE OF DEBTS.

CONVEYANCE *of* Freeholds *by* Devisees in Trust *under a* Will *in* exercise *of the* Power *of* Sale *vested in them under a* Charge *of the* Testator's Real Estate *with payment of his* Debts (*a*).

Parties.

THIS INDENTURE, made the —— day of ——, Between A. B. of, &c., and C. D. of, &c. (*vendors*), of the one part, and E. F. of, &c. (*purchaser*), of the other part: Whereas, X. Y.,

(*a*) If a testator charges his real estate, or any part thereof, with the payment of his debts, and then devises the same for his whole interest therein

late of, &c., deceased, duly made his will, dated, &c., and thereby, after charging his real estate with the payment of his debts, he devised and bequeathed all his real and personal estate and effects unto and to the use of the said A. B. and C. D., their heirs, executors, administrators, and assigns, upon the trusts therein declared concerning the same, and appointed G. H. sole executor of his said will: AND WHEREAS the said testator died on the —— day of —— without having altered or revoked his said will, and such will was duly proved by the said G. H., on the —— day of ——, in the principal Probate Registry of the High Court of Justice: AND WHEREAS the hereditaments hereinafter described form part of the real estate devised by the said recited will: AND WHEREAS, in exercise of the power of sale now vested in the said A. B. and C. D. by reason of the said X. Y. having by his said will charged his real estate with the payment of his debts as aforesaid, they the said A. B. and C. D. have agreed to sell to the said E. F. the

CONVEYANCE BY DEVISEES UNDER TESTAMENTARY CHARGE OF DEBTS.

Recite will whereby real estate was charged with testator's debts.

Death of testator and probate of his will.

Agreement by devisees to exercise power of sale.

to trustees, the trustees can alone sell such property under the trust or power created by the charge of debts. But if a testator does not devise such real estate so as to vest his whole interest therein in trustees, the executors will be the persons to sell under the charge of debts, and their conveyance will pass the legal as well as the equitable estate. (See 22 & 23 Vict. c. 35, ss. 14—17.)

Persons entitled to sell under charge of debts.

If, however, a testator charges his real estate, or any part thereof, with the payment of his debts, and then devises the same for his whole interest therein to a devisee for his own benefit, then, although the property may be also charged by the will with annuities and legacies, the devisee, if an executor also, can confer a good title upon a purchaser without the concurrence of the annuitants or legatees, for the trust or power created by the charge of debts must override and be paramount to every beneficial gift or charge. (Eland *v.* Eland, 4 My. & Cr. 420; Forbes *v.* Peacock, 1 Ph. 717; Watters on the Trustee Acts, p. 211; 22 & 23 Vict. c. 35, s. 18.) When the beneficial devisee and executor are different persons it is still undecided whether the beneficial devisee can make a good title without the executor, but the better opinion seems to be that he can. (Corser *v.* Cartwright, L. R. 7 H. L. 731.)

Administrator cannot sell.

When a testator by his will charges his real estate with the payment of his debts, and the executors of the will renounce, an administrator with the will annexed has no power to sell under the above-mentioned Act. (*Re* Clay & Tetley, 16 Ch. D. 3.)

When express direction to sell vests power of sale in executor.

Where a will contains an express power or direction to sell real estate and to apply the proceeds in the payment of debts or legacies, or where a testator directs real and personal estate to be sold and converted into money and the proceeds of both properties to be divided as a mixed fund, and no person is named in the will in either case to exercise the power or to carry the direction into effect, the power to sell will vest in the executors, and their conveyance will carry the legal as well as the equitable estate. (Forbes *v.* Peacock, 11 M. & W. 610; Tylden *v.* Hyde, 2 Sim. & Stu. 238. Sugden on Powers, p. 118, 8th Ed.)

CONVEYANCE BY DEVISEES UNDER TESTAMENTARY CHARGE OF DEBTS.

hereditaments hereinafter described at the price of £——: NOW THIS INDENTURE WITNESSETH, that in consideration of the sum of £—— to the said A. B. and C. D. paid by the said E. F. on or before the execution of these presents (the receipt whereof the said A. B. and C. D. hereby acknowledge), the said A. B. and C. D., as trustees, in exercise of the aforesaid power, hereby sell and convey unto the said E. F., ALL &c., (*parcels*): TO HOLD the same unto and to the use of the said E. F., in fee simple.

Devisees sell parcels to purchaser in fee.

IN WITNESS, &c.

No. LXXI.

CONVEYANCE BY EXECUTORS UNDER TESTAMENTARY CHARGE OF DEBTS.

CONVEYANCE *of* FREEHOLDS *by* EXECUTORS *in* EXERCISE *of the* POWER *of* SALE *vested in them under a* CHARGE *of the* TESTATOR'S REAL ESTATE *with payment of his* DEBTS.

Parties.

THIS INDENTURE, made the —— day of ——, BETWEEN A. B. of, &c., and C. D. of, &c. (*vendors*), of the one part, and E. F. of, &c. (*purchaser*), of the other part: WHEREAS X. Y., late of, &c., duly made his will, dated, &c., and thereby, after charging his real estate with the payment of his debts, he devised such real estate unto G. H. for his life, with remainder to all the children of G. H. who being a son or sons should attain the age of twenty-one years, and being a daughter or daughters should attain that age or marry and their heirs and assigns in equal shares, and appointed the said A. B. and C. D. executors of his said will (*Death of testator and probate of his will*): AND WHEREAS in exercise of the power of sale now vested in the said A. B. and C. D., as such executors as aforesaid in virtue of the said X. Y. having by his said will charged his real estate with the payment of his debts, they the said A. B. and C. D., as such executors, have agreed to sell to the said E. F. the hereditaments hereinafter described (which hereditaments form part of the real estate devised by the said recited will), at the price of £——: NOW THIS INDENTURE WITNESSETH,

Recite will charging real estate with payment of debts.

Agreement by executor to exercise power of sale.

that in consideration of the sum of £—— to the said A. B. and C. D., as the personal representatives of the said X. Y. deceased, paid by the said E. F. on or before the execution of these presents (the receipt whereof the said A. B. and C. D. hereby acknowledge), the said A. B. and C. D. as such personal representatives as aforesaid, in exercise of the aforesaid power, hereby sell and convey unto the said E. F., ALL, &c. (*parcels*): TO HOLD the same unto and to the use of the said E. F., in fee simple.

CONVEYANCE BY EXECUTORS UNDER TESTAMENTARY CHARGE OF DEBTS.

Consideration.

Executors of will sell parcels to purchaser.

IN WITNESS, &c.

No. LXXII.

CONVEYANCE *of* FREEHOLDS *belonging to a* JOINT-STOCK COMPANY, LIMITED, *on a sale by the* LIQUIDATORS.

CONVEYANCE OF FREEHOLDS BY THE LIQUIDATORS OF A JOINT STOCK COMPANY, LIMITED.

THIS INDENTURE, made, &c., BETWEEN the —— Company, Limited, hereinafter called "the said Company" (*vendors*), of the one part, and G. H. of, &c. (*purchaser*), of the other part: WHEREAS by an indenture, dated, &c., and made between —— of the one part and the said Company of the other part, the hereditaments hereinafter described were conveyed unto and to the use of the said Company: AND WHEREAS at an extraordinary meeting of the shareholders of the said Company, duly convened and held at the —— Hotel, in the City of London, on the —— day of ——, and at a subsequent extraordinary meeting of shareholders also duly convened and held at the said Hotel on the —— day of ——, the following special resolution was duly passed and confirmed, namely, that the said Company be wound up voluntarily under section 129 of "the Companies' Act, 1862," and that A. B., C. D., and E. F. be appointed liquidators of the said Company: AND WHEREAS notice of the said special resolution was duly inserted in the London Gazette on the —— day of ——: AND WHEREAS the said liquidators, for and on behalf of the said Company, have agreed to sell to the said G. H. the hereditaments hereinafter described at the price of £——: NOW THIS INDENTURE WITNESSETH, that in

Parties.

Recite conveyance to company.

Extraordinary meetings of company.

Resolution that company should be wound up

Appointment of liquidators.

Agreement for sale.

CONVEYANCE OF FREEHOLDS BY THE LIQUIDATORS OF A JOINT STOCK COMPANY, LIMITED.

consideration of the sum of £—— to the said Company paid by the said G. H., as appears by the receipt endorsed in these presents, the said Company, as beneficial owners, hereby convey unto the said G. H. All, &c. (*parcels*): To hold the same unto and to the use of the said G. H., in fee simple.

Consideration.

The company conveys parcels,

to purchaser in fee.

In witness whereof the said liquidators have caused the common seal of the said Company to be attached to these presents, and the said G. H. has hereunto set his hand and seal, the day and year first above written (*a*).

No. LXXIII.

CONVEYANCE BY ADMINISTRATOR OF CONVICT'S PROPERTY.

CONVEYANCE *by the* Administrator *of a* Convict *of a* Freehold Estate, *to which he was* Entitled *at the* date *of his* Conviction (*b*).

Parties.

THIS INDENTURE, made the —— day of ——, Between A. B. of, &c. (*administrator*), of the one part, and C. D. of, &c. (*purchaser*), of the other part: Whereas G. H. was convicted of felony at the assizes held at —— in the month of —— last, and judgment of penal servitude was duly recorded against him by the Court of ——: And whereas Her Majesty, by writing under her royal sign manual, dated the —— day of ——, pursuant to the provisions for this purpose contained in an Act of Parliament passed in the 33rd and 34th years of Her present Majesty, intituled "An Act to abolish forfeitures for treason and felony, and otherwise amend the law relating thereto," committed the custody and management of the property of the said convict to the said A. B. as the administrator thereof: And whereas the said A. B. as such administrator as aforesaid, pursuant to the power for this purpose vested in him by

Recite conviction and judgment of penal servitude.

Appointment of administrator.

Agreement for sale.

(*a*) The receipt for the purchase-money to be indorsed on the conveyance should be in the following form, and should be signed by the liquidators or two of them:—"Received for and on behalf of the —— Company, Limited, the sum of £——, being the consideration money within expressed to be paid to the said Company."

(*b*) See *supra*, pp. 192, 193.

the said Act, hath agreed to sell to the said C. D. the freehold hereditaments hereinafter described (which hereditaments form part of the property to which the said G. H. was entitled at the date of his conviction as aforesaid), at the price of £——: NOW THIS INDENTURE WITNESSETH, that in consideration of the sum of £—— to the said A. B. as such administrator as aforesaid paid by the said C. D. on or before the execution of these presents (*the receipt, &c.*), the said A. B. as such administrator as aforesaid, and who for the purpose of the statutory covenant against incumbrances shall be deemed to convey as a trustee, doth hereby convey unto the said C. D. ALL, &c. (*parcels, &c.*): TO HOLD the same unto and to the use of the said C. D., in fee simple.

CONVEYANCE BY ADMINISTRATOR OF CONVICT'S PROPERTY.

Administrator conveys a freehold estate, part of the convict's property, to purchaser in fee.

IN WITNESS, &c.

No. LXXIV.

CONVEYANCE *of a* LIFE *Estate in* FREEHOLDS.

CONVEYANCE OF LIFE ESTATE IN FREEHOLDS.

THIS INDENTURE, made, &c., BETWEEN A. B. of, &c. (*vendor*), of the one part, and C. D. of, &c. (*purchaser*), of the other part: WHEREAS under or by virtue of the will of X. Y., late of ——, deceased, dated, &c., the said A. B. is seised of the hereditaments hereinafter described, for an estate during his life without impeachment of waste: AND WHEREAS the said A. B. hath agreed to sell his life estate in the said hereditaments to the said C. D. at the price of £——: NOW THIS INDENTURE WITNESSETH, that in consideration of the sum of £—— to the said A. B. paid by the said C. D. on or before the execution of these presents (*the receipt, &c.*), the said A. B., as beneficial owner, hereby conveys unto the said C. D. ALL, &c. (*parcels*): TO HOLD the same unto and to the use of the said C. D., for all the remainder of the life of the said A. B.

Parties.

Recite will under which vendor is seised for his life.

Agreement for sale of life estate.

Witnessing part.

Consideration.

Vendor conveys life estate to purchaser in fee.

IN WITNESS, &c.

No. LXXV.

CONVEYANCE *by* TENANT *for* LIFE *and* REMAINDERMAN.

CONVEYANCE BY TENANT FOR LIFE AND REMAINDERMAN.

THIS INDENTURE, made, &c., BETWEEN A. B. of, &c. (*tenant for life*), of the first part, C. D. of, &c. (*remainderman*), of the second part, and E. F. of, &c. (*purchaser*), of the third part:

Parties

WHEREAS under or by virtue of the will of X. Y., late of, &c., deceased, dated, &c., and an indenture dated, &c., and made, &c., and duly enrolled in the High Court of Justice (Chancery Division) as a disentailing assurance, the said A. B. is seised of the hereditaments hereinafter described for an estate during his life without impeachment of waste, and the said C. D. is seised of the same hereditaments in fee simple in remainder expectant on the said life estate of the said A. B.:

Recite title of vendors.

Agreement for sale.

AND WHEREAS the said A. B. and C. D. have agreed to sell the said hereditaments to the said E. F., subject to the succession duty (if any), to become payable on the death of the said A. B. (*a*), at the price of £——:

Witnessing part.

NOW THIS INDENTURE WITNESSETH, that in consideration of the sum of £—— to the said A. B. and C. D., paid by the said E. F. on or before the execution of these presents (*the receipt, &c.*), the said A. B., as beneficial owner,

Tenant for life and remainderman

as to his estate for life in the hereditaments hereinafter described, and the said C. D., as beneficial owner, as to his estate in fee simple in remainder expectant on the said life estate of the said A. B. in the said hereditaments, hereby respectively

convey to purchaser in fee.

convey unto the said E. F. (*Conveyance of freeholds to E. F. in fee simple, suprà*, p. 225): To HOLD the same unto and

Recital where succession duty paid in advance.

(*a*) See *suprà*, p. 104, note. If however it is arranged that the duty shall be paid in advance, the words "subject to the succession duty," &c., will be omitted in the above recital, and the following recital will be inserted :—

"AND WHEREAS the succession duty which will become payable for or in respect of the said hereditaments upon the decease of the said A. B., has before the execution of these presents been compounded for and satisfied in advance, under the provisions in that behalf contained in the 'Succession Duty Act, 1853.'"

to the use of the said E. F., in fee simple, subject to the succession duty (if any), to become payable on the decease of the said A. B. (*a*). CONVEYANCE BY TENANT FOR LIFE AND REMAINDERMAN.

IN WITNESS, &c.

No. LXXVI (*b*).

CONVEYANCE *of a* REMAINDER *in* FEE SIMPLE EXPECTANT *on a* LIFE ESTATE *to a* PURCHASER *who* COVENANTS *to* PAY *the* SUCCESSION DUTY (*c*). CONVEYANCE OF REMAINDER IN FEE.

THIS INDENTURE, made the —— day of ——, BETWEEN A. B. of, &c. (*vendor*), of the one part, and C. D. of, &c. (*purchaser*), of the other part (*Recite will of X. Y. devising the property to use of G. B. for life, with remainder to A. B. in fee*): AND WHEREAS the said A. B. hath agreed to sell to the said C. D. the hereditaments hereinafter described, subject to the life estate therein of the said G. B., at the price of £——: NOW THIS INDENTURE WITNESSETH, that in con- Parties. Recite title of vendor. Agreement for sale. Witnessing part.

(*a*) It is sometimes proposed that the vendor shall covenant to indemnify the purchaser against the succession duty, instead of compounding for it, but the objection to this plan is that the vendor, by such a covenant, may render himself liable for a larger sum than would have been payable if no alienation had taken place, the duty being calculated on the life of the actual successor, who may be a much younger man than the original successor. If, however, it is so wished, the following may be inserted :—

"AND THE SAID C. D. hereby covenants with the said E. F., that the said C. D., his heirs, executors, or administrators, will pay the succession duty (if any) to become payable upon the decease of the said A. B., for or in respect of the hereditaments hereby conveyed, and will keep indemnified the said E. F., and his estate and effects, from and against the said succession duty, and all claims and demands on account of the same."

(*b*) The 31 Vict. c. 4 provides that "no purchase made *bonâ fide* and without fraud or unfair dealing of any reversionary interest in real or personal estate, shall, after the 1st of January, 1868, be opened or set aside merely on the ground of under value." The jurisdiction of the Court over unconscionable bargains is not affected by this Act. (Tyler *v.* Yates, L. R. 11 Eq. 265 ; The Earl of Aylesford *v.* Morris, L. R. 8 Ch. 484.)

(*c*) See *suprà*, pp. 104, 318, notes.

CONVEYANCE OF REMAINDER IN FEE.

sideration, &c. (*the receipt, &c.*), the said A. B., as beneficial owner, hereby conveys unto the said C. D., ALL, &c. (*parcels*): TO HOLD the same (subject to the life estate therein of the said G. B.), unto and to the use of the said C. D., in fee simple: AND THE SAID C. D. hereby covenants with the said A. B. to pay the succession duty (if any) which will become payable upon the decease of the said G. B. for or in respect of the hereditaments hereby conveyed, and to keep indemnified the said A. B. and his estate and effects, from the said succession duty, and all claims and demands on account of the same (*a*).

Vendor conveys (subject to life estate) to purchaser in fee.

Covenant by purchaser to pay succession duty and indemnify vendor therefrom.

IN WITNESS, &c.

No. LXXVII.

CONVEYANCE BY HEIR AND PERSONAL REPRESENTATIVE OF DECEASED VENDOR.

CONVEYANCE *by* HEIR *and* PERSONAL REPRESENTATIVE *of* DECEASED VENDOR *to a* PURCHASER (*aa*).

THIS INDENTURE, made the —— day of ——, BETWEEN A. B. of, &c. (*heir of deceased vendor*), of the first part, C. D. of, &c. (*widow and administratrix of deceased vendor*), of the second part, and E. F. of, &c. (*purchaser*), of the third part: WHEREAS X. Y., late of, &c., deceased, did, by a memorandum in writing dated the —— day of ——, agree with the said E. F. for the absolute sale of, &c. (*Agreement for sale*), but the said sale was not completed, nor was any part of the purchase-money paid in the lifetime of the said X. Y.: AND WHEREAS

Parties.

Recite agreement for sale by X. Y., deceased.

(*a*) This covenant must be considered as inserted *ex abundanti cautelâ*, for it could hardly be contended that A. B. the remainderman, after aliening his remainder, is still liable to the duty. He is not the successor, although he would have been so, but for the alienation. The successor is C. D. if living, when the tenant for life dies, and the duty payable by him, although at the same rate, is a different sum to that which A. B. would have had to pay.

(*aa*) It is assumed in the above Precedent that the vendor died before the 1st January, 1882. Otherwise the personal representative could alone convey the legal as well as the equitable estate, it being provided by the 4th section of the Conveyancing Act, 1881, that, in cases of death occurring after 31st December, 1881, where at the death of any person there is sub-

the said X. Y. died intestate on the —— day of ——, leaving the said C. D. his widow, and the said A. B. his eldest son and heir at law: AND WHEREAS letters of administration of the personal estate and effects of the said X. Y. were, on the —— day of ——, granted to the said C. D. by or out of the Probate Registry at —— of the High Court of Justice: AND WHEREAS the said E. F. has requested the said A. B. and C. D. to complete the said sale, which they have agreed to do in the manner hereinafter expressed: NOW THIS INDENTURE WITNESSETH, that in pursuance of the said agreement, and in consideration of the sum of £——, paid by the said E. F. to the said C. D. as such administratrix as aforesaid on or before the execution of these presents (*the receipt, &c.*), the said A. B., at the request of the said C. D. hereby conveys unto, &c. (*Conveyance to E. F. in fee simple, suprà*, p. 225).

IN WITNESS, &c.

CONVEYANCE BY HEIR AND PERSONAL REPRESENTATIVE OF DECEASED VENDOR.

Death of X. Y. intestate, leaving widow and heir at law.

Administration granted to C. D.

That purchaser has required administratrix and heir to complete the sale.

Witnessing part.

Consideration.

Heir conveys to purchaser in fee.

No. LXXVIII.

CONVEYANCE *of* FREEHOLDS *by the* PERSONAL REPRESENTATIVE *of a deceased* VENDOR, *by virtue of the* CONVEYANCING ACT, 1881 (*a*).

CONVEYANCE BY PERSONAL REPRESENTATIVE OF DECEASED VENDOR.

THIS INDENTURE, made the —— day of ——, BETWEEN A. B. of, &c. (*personal representative of X. Y.*), of the one part, and C. D. of, &c. (*purchaser*), of the other part: WHEREAS by a memorandum of agreement dated the —— day of ——, and made between X. Y. of the one part and the said C. D. of the other part, the said X. Y. agreed to sell to the said C. D., and the

Parties.

Recite agreement for sale of freeholds.

sisting a contract enforceable against his heir or devisee for the sale of the fee simple or other freehold interest descendible to his heir general in any land, his personal representatives shall by virtue of this Act have power to convey the land for all the estate and interest vested in him at his death, in any manner proper for giving effect to the contract.

(*a*) See note, *suprà*, p. 320.

CONVEYANCE BY PERSONAL REPRESENTATIVE OF DECEASED VENDOR.

said C. D. agreed to purchase of him the hereditaments hereinafter described at the price of £——, and thereupon the sum of £—— was paid by the said C. D. to the said X. Y. by way of deposit and in part payment of the said purchase-money, but no further part of the said purchase-money has been paid by the said C. D. up to the date of these presents: AND WHEREAS the said X. Y. died on the —— day of ——, 1882, intestate, and letters of administration of his personal estate and effects were granted on the —— day of —— to the said A. B. by ——: NOW THIS INDENTURE WITNESSETH, that in pursuance of the aforesaid agreement, and in consideration of the sum of £—— so paid by way of deposit as aforesaid, and in consideration of the sum of £—— now paid by the said C. D. to the said A. B. as the personal representative of the said X. Y. (the payment and receipt in manner aforesaid of which said several sums of £—— and £——, making together the entire purchase-money or sum of £——, the said A. B., as such personal representative as aforesaid, hereby acknowledges), the said A. B., as such personal representative as aforesaid, and by virtue of the Conveyancing and Law of Property Act, 1881, hereby conveys unto the said G. H., ALL, &c. (*parcels*): TO HOLD the same unto and to the use of the said C. D. in fee simple.

Payment of deposit to vendor.

Death of vendor intestate.

Letters of administration to his effects.

Consideration sum paid by way of deposit.

Remainder of purchase-money paid to administrator.

Conveyance of parcels by legal personal representative of vendor to purchaser in fee.

IN WITNESS, &c.

No. LXXIX.

CONVEYANCE TO DEVISEE OF PURCHASER.

CONVEYANCE *of* FREEHOLDS *to* DEVISEE *of* PURCHASER *who* DIED BEFORE PAYMENT *of* PURCHASE MONEY *or* EXECUTION *of the* CONVEYANCE (*a*).

THIS INDENTURE, made the —— day of ——, BETWEEN A. B. of, &c. (*vendor*), of the one part, and C. D. (*devisee of the purchaser*), of the other part: WHEREAS by a memorandum of agreement dated the —— day of ——, and entered into be-

Parties.

Agreement to sell to E. F.

(*a*) See 30 & 31 Vict. c. 69; 40 & 41 Vict. c. 34, and Dissertation on Mortgages, *infrà*, p., 484.

tween the said A. B. of the one part, and E. F. of, &c., of the other part, the said A. B. agreed to sell, and the said E. F. agreed to purchase the hereditaments hereinafter described at the price of £1,000, and it was thereby agreed that the sum of £200, part of the said purchase-money, should be paid on the signature of the agreement now in recital, and that the remainder of the said purchase-money should be paid and the conveyance of the said hereditaments to the said E. F. should be executed on the —— day of —— then next: AND WHEREAS the sum of £200 part of the said purchase-money was paid by the said E. F. to the said A. B. on the signature of the said agreement, as the said A. B. hereby admits: AND WHEREAS the said E. F. died on the —— day of ——, having made his will, dated the —— day of ——, whereby he devised all his real estate to the said C. D., and appointed L. M. of, &c., and N. O. of, &c., executors of his said will, and such will was duly proved on the —— day of —— by the said executors thereof in the principal Probate Registry of the High Court of Justice: AND WHEREAS the said recited agreement still remains uncompleted, and the sum of £800, being the remainder of the said purchase-money, still remains unpaid: NOW THIS INDENTURE WITNESSETH, that in pursuance of the said recited memorandum of agreement, and in consideration of the said sum of £200 to the said A. B. paid by the said E. F. as hereinbefore mentioned, and in consideration of the sum of £800 to the said A. B. now paid by the said C. D., (the receipt of which said sums of £200 and £800, making together the said purchase money or sum of £1,000, the said A. B. hereby acknowledges) the said A. B. as beneficial owner hereby conveys unto the said C. D., ALL, &c. (*parcels*): TO HOLD the same unto and to the use of the said C. D. in fee simple.

IN WITNESS, &c.

CONVEYANCE TO DEVISEE OF PURCHASER.

Will of E. F. devising his real estate to C. D.

That agreement remains uncompleted and part of purchase-money remains unpaid.

In consideration of remainder of purchase-money paid by devisee, vendor conveys parcels to devisee of purchaser.

No. LXXX.

CONVEYANCE TO TRUSTEES PURCHASERS UNDER POWER TO LAY OUT TRUST MONEY IN LAND.

CONVEYANCE *of* FREEHOLDS *to* TRUSTEES *as* PURCHASERS *under a* POWER *contained in a* SETTLEMENT *to lay out* TRUST MONEY *in* PURCHASE *of* LAND (*a*).

Parties.

THIS INDENTURE, made the —— day of ——, BETWEEN A. B. of, &c. (*vendor*), of the first part, C. D. of, &c., and E. F. of, &c. (*trustees*), of the second part, and G. H. of, &c., and L. his wife (*consenting parties to purchase*), of the third part (*Recite settlement on marriage of G. H. and L. his wife, then L. M., whereby certain trust funds were settled with a power for the trustees at the request of husband and wife to lay out any part thereof in the purchase of land,—agreement by A. B. to sell to C. D. and E. F.*): AND WHEREAS the said agreement for purchase was entered into by the said C. D. and E. F. at the request of the said G. H. and L. his wife, in exercise of the power of purchasing land contained in the said indenture of settlement as aforesaid, and the said purchase-money of £—— has been raised by the said C. D. and E. F. at the like request out of the trust funds comprised in the said indenture: NOW THIS INDENTURE WITNESSETH that in pursuance of the said agreement, and in consideration of the sum of £—— to the said A. B. paid by the said C. D. and E. F. on or before the execution of these presents out of the trust funds comprised in the said indenture of settlement at the request of the said G. H. and L. his wife (*the receipt, &c.*), the said A. B., as beneficial owner, hereby conveys unto the said C. D. and E. F., ALL, &c. (*parcels*): TO HOLD the same unto and to the use of the said C. D. and E. F., in fee simple, UPON THE TRUSTS, and with and subject to the powers and provisions by and in

Recite settlement with power to purchase land.

Agreement for sale.

That purchasers entered into agreement as trustees.

Witnessing part.

Consideration.

Vendor conveys

to trustees upon trusts of settlement.

When land is purchased by trustees the trust should in general be disclosed.

(*a*) When land is purchased by trustees under a power of laying out trust money in the purchase of land, the conveyance is sometimes made to the trustees as ordinary purchasers, without disclosing on the face of the instrument the fact of their being trustees. But in most cases (if not in all), it becomes necessary, sooner or later, to disclose the trust on the face of the title, and it seems therefore the better course to let the trust appear in the original purchase deed, as in the above Precedent, or in a deed indorsed thereon, as in Precedent No. LXXXII., *infrà*.

the hereinbefore recited indenture of settlement declared and contained concerning the hereditaments thereby authorized to be purchased with or out of the said trust funds, or such of them as are now subsisting and capable of taking effect.

IN WITNESS, &c.

CONVEYANCE TO TRUSTEES PURCHASERS UNDER POWER TO LAY OUT TRUST MONEY IN LAND.

No. LXXXI.

CONVEYANCE *to* PURCHASERS *as* JOINT TENANTS.

CONVEYANCE TO PURCHASERS AS JOINT TENANTS.

THIS INDENTURE, made the —— day of ——, BETWEEN A. B. of, &c. (*vendor*), of the one part, and C. D. of, &c., and E. F. of, &c. (*purchasers*), of the other part: WITNESSETH, that in consideration of the sum of £—— as purchase-money to the said A. B. paid by the said C. D. and E. F. out of moneys belonging to them on a joint account (*the receipt, &c.*), the said A. B., as beneficial owner, hereby conveys unto the said C. D. and E. F., ALL, &c. (*parcels*): TO HOLD the same unto and to the use of the said C. D. and E. F., in fee simple.

Parties.

Consideration.

Vendor conveys to purchasers as joint tenants.

IN WITNESS, &c.

No. LXXXII.

DECLARATION *of* TRUST *of* LANDS PURCHASED *under a* POWER *in a* SETTLEMENT *of* PERSONAL ESTATE (*by indorsement on the last Precedent*).

DECLARATION OF TRUST OF LANDS PURCHASED UNDER POWER IN SETTLEMENT

TO ALL TO WHOM THESE PRESENTS shall come, THE within named C. D. and E. F. and G. H. of, &c., and L. his wife, send greeting (*Recite settlement as in Precedent No. LXXX.*): AND WHEREAS the purchase of the hereditaments comprised in the within written indenture was made by the said C. D. and E. F. as the trustees of the hereinbefore recited indenture of settlement at the request in writing of the said G. H. and L. his wife, and in exercise of the power in that behalf contained in the

Parties.

Recite that purchase was made by trustees under power in settlement to purchase lands.

DECLARATION OF TRUST OF LANDS PURCHASED UNDER POWER IN ETTLEMENT.

last mentioned indenture as aforesaid, and the within mentioned purchase money of £—— was raised by the said C. D. and E. F. at the like request out of the trust funds comprised in the same indenture, as the said C. D., E. F., G. H. and L. his wife, do hereby respectively declare: NOW THESE PRESENTS WITNESS, that in consideration of the premises it is hereby declared and agreed that the said C. D. and E. F., their heirs and assigns, shall stand and be seised of and interested in all the hereditaments and premises comprised in and conveyed by the within written indenture, UPON THE TRUSTS &c. (*as in Precedent No. LXXX.*).

Witnessing part.

Declaration of trust.

IN WITNESS, &c.

No. LXXXIII.

ASSIGNMENT OF LEASEHOLDS TO TRUSTEES UNDER POWER IN MONEY SETTLEMENT.

ASSIGNMENT *of a* LEASEHOLD HOUSE *to* TRUSTEES *purchasing under a* POWER *in a* MONEY SETTLEMENT, *the* HOUSE *having been in the first instance assigned to the* BENEFICIARY FOR LIFE *who assigns to the* TRUSTEES (*a*).

Parties.

THIS INDENTURE, made the —— day of ——, BETWEEN A. B. of, &c. (*assignor*), of the one part, and C. D. of, &c., and E. F. of, &c. (*trustees*), of the other part: WHEREAS by an indenture, &c. (*recite lease to G. H.*): AND WHEREAS by an indenture bearing even date with these presents, and made between the said G. H. of the one part, and the said A. B. of the other

Recite lease, and assignment by vendor to assignor.

Plan to be adopted, where trustees purchase leaseholds, as regards the liability to the rent and lessee's covenants.

(*a*) A trustee purchasing leaseholds is bound, like any other purchaser, to covenant with the vendor to indemnify him against the rent and covenants in the lease. Whenever, therefore, a purchase is made at the request of the beneficiary for life, it will be prudent for the trustees to stipulate that the covenant shall be given by the beneficiary and not by themselves. In that case, the most convenient plan is for the beneficiary to enter into the contract with the vendor and to take an assignment to himself in the first instance, which assignment will be in the form of Precedent No. XI., and contain the usual covenant to indemnify the vendor. The beneficiary will then by a second deed (of which the above is a precedent) assign the property to the trustees, who will enter into no covenant. The result will be that the liability of the trustees will cease on their parting with the property.

ASSIGNMENT OF LEASEHOLDS TO TRUSTEES UNDER POWER IN MONEY SETTLEMENT

part, in consideration of the sum of £—— paid by the said A. B. as purchase-money, the said G. H. has assigned the said leasehold premises unto the said A. B. for the remainder of the said term of —— years, subject to the said rent, covenants, and conditions: AND WHEREAS the said C. D. and E. F. are the trustees of an indenture of settlement dated, &c., and made, &c., and as such trustees are authorized with the consent in writing of the said A. B. to invest any part of the trust money settled by the said indenture in the purchase of a messuage or dwelling-house, being freehold or copyhold of inheritance or leasehold held for a term whereof sixty years at least are unexpired at the time of the purchase, which messuage or dwelling-house is to be held by them upon the trusts declared concerning the same by the said indenture: AND WHEREAS the purchase expressed to be made by the said indenture bearing even date herewith has been made by the said A. B. on behalf of the said C. D. and E. F., and the purchase-money of £—— therein expressed to be paid by the said A. B. has been in fact paid by the said C. D. and E. F. out of the trust money settled by the said indenture of settlement; And the said A. B. has therefore agreed to make such assignment as is hereinafter expressed: NOW THIS INDENTURE WITNESSETH, that in pursuance of the said agreement and in consideration of the premises the said A. B. as trustee hereby assigns unto the said C. D. and E. F. THE messuage or dwelling-house and premises comprised in the said indenture of lease of the —— day of ——, 18—, and thereby demised: TO HOLD the same unto the said C. D. and E. F. for all the residue now unexpired of the said term of —— years, subject to the rent reserved by the said indenture of lease and to the covenants and conditions therein contained, and on the lessee's part to be observed and performed: NEVERTHELESS, upon the trusts and with and subject to the powers and provisions applicable thereto under the said indenture of settlement as having been purchased out of the said trust moneys.

That trustees are authorized to lay out trust money in purchase of a house.

That purchase made by assignor was on behalf of trustees, and agreement for assignment.

Assignment to trustees.

Upon trusts of settlement.

IN WITNESS, &c.

No. LXXXIV.

CONVEYANCE TO USES OF REAL PROPERTY SETTLEMENT.

CONVEYANCE *to the* USES *of a* REAL PROPERTY SETTLEMENT *where the* PURCHASE *is made with* MONEYS *arising from a* SALE *of the* SETTLED PROPERTY *under a* POWER *of* SALE.

Parties.

THIS INDENTURE, made, &c., BETWEEN A. B. of, &c. (*vendor*), of the first part, C. D. of, &c., and E. F. of, &c. (*purchasers and trustees*), of the second part, and G. H. of, &c. (*tenant for life under the settlement*), of the third part: WHEREAS

Recite settlement of real estate,

by an indenture dated, &c., and made between the said G. H., of the first part, J. K. of, &c. (now the wife of the said G. H.), of the second part, and the said C. D. and E. F., of the third part (being a settlement made in contemplation of the marriage then intended and shortly afterwards solemnized between the said G. H. and the said J. K.), the messuages, lands, and hereditaments situate in the parish of —— in the county of ——, in the said indenture particularly described, were limited and settled from and after the solemnization of the said then intended marriage, TO THE USE of the said G. H. and his assigns during his life without impeachment of waste, with remainders over:

power to trustees to sell,

And by the indenture now in recital it was declared that it should be lawful for the said C. D. and E. F., at the request of the said G. H., during his life to sell all or any part of the

and direction that purchase-money be laid out in the purchase of other land to be settled to like uses.

hereditaments thereby settled, and that the moneys to arise from such sale should be laid out in the purchase of other freehold hereditaments situate in England or Wales, or of copyhold or leasehold hereditaments convenient to be held therewith, or with the hereditaments for the time being subject to the uses of the said indenture, yet so that during the life of the said G. H. such purchase should be made with his consent in writing, and that the hereditaments so to be purchased should be settled and assured to the uses, upon the trusts, and with, under, and subject to the powers, provisoes, agreements, and declarations thereinbefore declared and contained concerning the

Sale of real estate under power.

said hereditaments thereby settled: AND WHEREAS in exercise of the power of sale so as aforesaid contained in the hereinbefore recited indenture, the said C. D. and E. F., at the

request of the said G. H., have from time to time sold parts of the hereditaments comprised in the same indenture, and have received the moneys arising from the said several sales: AND WHEREAS the said C. D. and E. F., with the consent of the said G. H., and in pursuance of the direction for purchasing hereditaments contained in the said indenture of settlement, have agreed to purchase from the said A. B. the hereditaments hereinafter described at the price of £——: NOW THIS INDENTURE WITNESSETH, that in consideration of the sum of £—— to the said A. B. paid by the said C. D. and E. F., on or before the execution of these presents, with the consent of the said G. H., out of the moneys produced by the hereinbefore mentioned sales (*the receipt whereof, &c.*), the said A. B., as beneficial owner, by the direction as well of the said C. D. and E. F., as also of the said G. H., hereby conveys unto the said C. D. and E. F., ALL, &c. (*parcels*): TO HOLD the same unto the said C. D. and E. F. in fee simple, TO THE USES, upon the trusts, and with and subject to the powers and provisions by and in the hereinbefore recited indenture of settlement declared and contained concerning the hereditaments thereby settled, or such of them as are now subsisting and capable of taking effect, but not so as to increase or multiply charges or powers of charging.

CONVEYANCE TO USES OF REAL PROPERTY SETTLEMENT.

Agreement by trustees of settlement to purchase.

Witnessing part.

Consideration.

Vendor conveys parcels

to uses of settlement.

IN WITNESS, &c.

No. LXXXV.

CONVEYANCE *to the* USES *of a* REAL PROPERTY SETTLEMENT, *where the* PURCHASE *is made with* MONEY *liable to be laid out in the* PURCHASE *of* LANDS, *and where there have been several* SUBSEQUENT *Deeds* SUPPLEMENTAL *to the* SETTLEMENT.

CONVEYANCE TO USES OF REAL PROPERTY SETTLEMENT.

THIS INDENTURE, made the —— day of ——, BETWEEN A. B. of, &c. (*vendor*), of the first part, C. D. of, &c., and E. F. of, &c. (*purchasers and trustees*), of the second part, and G. H. of, &c. (*tenant for life under the settlement*), of the third part: WHEREAS the said C. D. and E. F. are the trustees of the indenture of settlement firstly mentioned in the first

Parties.

Recite that purchasers are trustees of settlement.

CONVEYANCE TO USES OF REAL PROPERTY SETTLEMENT.

schedule hereto, being a settlement of the capital messuage or mansion-house, called ——, and of divers other messuages, lands, and hereditaments, situate in the county of ——, and as such trustees they have in their hands money liable to be laid out with the consent of the said G. H., who is the tenant for life in possession under the said settlement, in purchase of lands to be settled to the uses hereinafter mentioned: AND WHEREAS the said C. D. and E. F., as such trustees as aforesaid, with the consent of the said G. H., have agreed with the said A. B. to purchase from him the hereditaments hereinafter described at the price of £——: NOW THIS INDENTURE WITNESSETH, that in consideration of the sum of £—— to the said A. B. paid by the said C. D. and E. F. on or before the execution of these presents out of the trust money hereinbefore referred to (the receipt whereof the said A. B. hereby acknowledges), the said A. B., as beneficial owner, hereby conveys unto the said C. D. and E. F., ALL, &c. (*parcels*): To HOLD the same unto the said C. D. and E. F., in fee simple, To THE USES, upon the trusts, and with and subject to the powers and provisions to, upon, with, and subject to which the said capital messuage, called ——, and the lands settled therewith, now stand limited under or by virtue of the deeds mentioned in the first schedule hereto: AND THE SAID A. B. hereby acknowledges the right of the said G. H. and his successors in title to production of the documents mentioned in the second schedule hereto, and to delivery of copies thereof, which documents relate not only to the hereditaments hereby conveyed, but also to other hereditaments of the said A. B., and the said A. B. hereby undertakes for the safe custody of the said documents.

Agreement to purchase.

Witnessing part.

Vendor conveys to trustees.

To uses, &c., to which settled property stands limited under settlement and subsequent deeds.

Acknowledgment of right to production of documents, and undertaking for safe custody.

IN WITNESS, &c.

THE FIRST SCHEDULE ABOVE REFERRED TO.

1st January, 1850. INDENTURE OF SETTLEMENT between, &c. (*parties*).

1st May, 1860. INDENTURE between, &c. (*parties*), being an appointment of new trustees of the said indenture of settlement.

INDENTURE, &c. (*parties*), being a deed creating a jointure in favour of ——, and charging the settled estates with portions for the younger children of ——. CONVEYANCE TO USES OF REAL PROPERTY SETTLEMENT. 1st June, 1865.

INDENTURE between, &c. (*parties*), and enrolled in the High Court of Justice, Chancery Division, as a disentailing deed. 1st Aug. 1875.

INDENTURE between, &c. (*parties*), being a resettlement of the settled estates. 2nd Aug. 1875.

THE SECOND SCHEDULE ABOVE REFERRED TO.

(*To comprise documents.*)

No. LXXXVI.

CONVEYANCE *and* DECLARATION *of* TRUST *of* FREEHOLDS, COPYHOLDS, *and* LEASEHOLDS, *purchased with* MONEYS *arising from a* SALE *of* SETTLED PROPERTY (*a*). CONVEYANCE AND DECLARATION OF TRUST OF FREEHOLDS, COPYHOLDS, AND LEASEHOLDS.

THIS INDENTURE, made the —— day of ——, BETWEEN A. B. of, &c., and C. D. of, &c. (*trustees*), of the first part, E. F. of, &c., and G. his wife, of the second part, and L. M. of, &c. (*grantee to uses*), of the third part (*Recite the settlement whereby certain freehold hereditaments were limited to the said A. B. and C. D. and their heirs, to the use of E. F. for his life, with remainder to G. his wife, for her life, with divers remainders over in strict settlement, and also the power of sale and exchange contained therein whereby the said A. B. and C. D. were empowered to sell the hereditaments* Parties.

(*a*) It is sometimes convenient to have the conveyance made in the first instance to the trustees as if they were purchasers on their own account, and to have a conveyance by a separate instrument from the trustees of the settlement, according to the method adopted in this Precedent.

CONVEYANCE AND DECLARATION OF TRUST OF FREEHOLDS, COPYHOLDS, AND LEASEHOLDS.

with the consent of the said E. F. and G. his wife, and were directed, with the like consent, to invest the moneys in the purchase of other freehold, copyhold, or leasehold hereditaments, to be settled to the same uses, or upon corresponding trusts): AND WHEREAS the said A. B. and C. D. have from time to time at the request and by the direction of the said E. F. and G. his wife, sold the greater part of the hereditaments comprised in the said indenture of settlement, for sums amounting together to £46,000, after deducting the expenses of the sales thereof: AND WHEREAS in pursuance of the direction in that behalf contained in the said indenture of settlement, the said A. B. and C. D., with the consent of the said E. F. and G. his wife have laid out the said sum of £46,000 in the purchase of the several freehold, copyhold, and leasehold hereditaments mentioned and described in the schedule hereunder written, and have caused the same to be respectively conveyed, surrendered, and assigned unto them as appears in the said schedule: AND WHEREAS the said A. B. and C. D., at the request of the said E. F. and G. his wife, have agreed to make such conveyance and declaration of trust of the said purchased hereditaments respectively as are hereinafter respectively contained: NOW THIS INDENTURE WITNESSETH, that in consideration of the premises, the said A. B. and C. D., as trustees, at the request of the said E. F. and G. his wife, hereby convey unto the said L. M. ALL the messuages, lands, tenements, and hereditaments mentioned and described in the first part of the schedule hereunder written: TO HOLD the same unto the said L. M. in fee simple, TO THE USES, &c. (*as in last Precedent*, p. 330). AND THIS INDENTURE ALSO WITNESSETH, that in consideration of the premises, it is hereby agreed and declared that the said A. B. and C. D., their heirs, executors, administrators, and assigns, respectively, shall henceforth stand seised and possessed of, and interested in, ALL the copyhold and leasehold messuages, lands, tenements and hereditaments mentioned and described in the second and third parts of the schedule hereunder written: UPON SUCH TRUSTS, and with, under, and subject to such powers and provisions as will correspond as nearly as the different nature and tenure of the premises will permit, with the uses, trusts, powers, and provisions hereinbefore by reference declared and contained con-

Sale of lands under power of sale and exchange.

Purchases made by trustees with sale moneys.

Agreement by trustees to convey to uses of settlement, &c.

First witnessing part.

Trustees convey.

Parcels in first part of schedule

to uses of settlement.

Second witnessing part.

Declaration of trust of copyholds and leaseholds in second and third parts of schedule.

cerning the freehold hereditaments hereby conveyed: But so nevertheless, that the said leasehold hereditaments shall not vest absolutely in any person being tenant in tail by purchase of the said freehold hereditaments, unless he or she shall attain the age of twenty-one years, but upon his or her death under that age, shall go and devolve in the same manner as if the said leasehold hereditaments had been of freehold tenure, and had been hereinbefore conveyed as freehold accordingly. CONVEYANCE AND DECLARATION OF TRUST OF FREEHOLDS, COPYHOLDS, AND LEASEHOLDS.

In witness, &c.

The Schedule above referred to.

The 1st Part.

All that, &c. (*describe parcels*), which hereditaments and premises were conveyed unto and to the use of the said A. B. and C. D., their heirs and assigns, by an indenture dated, &c., and made between (*parties*): Also all that, &c. (*describe other parcels*), which last mentioned hereditaments and premises were conveyed, &c. (*as above*). Freehold parcels.

The 2nd Part.

All that, &c. (*parcels*), to which hereditaments and premises the said A. B. and C. D. were admitted tenants, upon the surrender of M. N., at a court holden in and for the manor of ——, on the —— day of ——: Also all that, &c. (*parcels*), to which last mentioned hereditaments and premises, being held of the manor of —— the said A. B. and C. D. were out of court admitted tenants, on the —— day of ——, upon the surrender of O. P. Copyhold parcels.

The 3rd Part.

All that, &c. (*parcels*), which premises were by an indenture dated, &c., and made, &c., assigned unto the said A. B. and C. D., their executors, administrators and assigns, for the residue of a term of —— years, created by an indenture of lease, dated, &c., and made, &c. Leasehold parcels.

No. LXXXVII.

CONVEYANCE, &c., WITH MONIES FROM SALE BY TENANT FOR LIFE UNDER SETTLED LAND ACT.

CONVEYANCE *and* ASSIGNMENT *of* FREEHOLDS *and* LEASEHOLDS *to the* USES *and upon the* TRUSTS *of a* SETTLEMENT *where the* PURCHASE *is made with* CAPITAL MONEY *arising under the* SETTLED LAND ACT, 1882 *from the sale of* PART *of the* SETTLED PROPERTY (*a*).

Parties.

THIS INDENTURE, made the —— day of ——, BETWEEN A. B. of, &c. (*vendor*), of the first part, C. D. of, &c. (*tenant for life*), of the second part, and E. F. of, &c., and G. H. of, &c. (*trustees*), of the third part: WHEREAS (*Recite settlement of hereditaments to use of C. D. for his life, with remainders over*): AND WHEREAS the said E. F. and G. H. are the present trustees of the said indenture of settlement for the purposes of the Settled Land Act, 1882, and they have in their hands capital money arising under the said Act from land settled by the said indenture: AND WHEREAS by the direction of the said C. D. the said E. F. and G. H. have agreed to invest the sum of £——, being part of the capital moneys in their hands as aforesaid, in the purchase of the freehold and leasehold hereditaments and premises hereinafter described: NOW THIS INDENTURE WITNESSETH, that in consideration of the sum of £—— to the said A. B. paid by the said E. F. and G. H. as such trustees as aforesaid on or before the execution of these presents by the direction of the said C. D. out of capital money in their hands as aforesaid (*the receipt, &c.*), the said A. B. as beneficial owner hereby conveys and assigns unto the said E. F. and G. H., *First*, ALL, &c. (*freehold parcels*), *Secondly* (*leasehold parcels*): TO HOLD the hereditaments and premises firstly hereinbefore described unto the said E. F. and G. H., in fee simple, TO THE USES, upon the trusts and subject to the powers and provisions which under the said indenture of settlement or by reason of the exercise of any power of charging therein contained are subsisting with respect to the hereditaments thereby settled, and as near thereto as circumstances will permit, but

Recite settlement.

That E. F. and G. H. are trustees for the purposes of Settled Land Act.

Agreement by trustees by direction of tenant for life to invest in land.

Consideration.

Vendor conveys and assigns.

Freeholds and leaseholds.

To hold freeholds to uses of hereditaments comprised in the settlement.

(*a*) See Settled Land Act, 1882, secs. 22, 24.

not so as to increase or multiply charges or powers of charging, AND TO HOLD the hereditaments and premises secondly hereinbefore described unto the said E. F. and G. H. for the residue now unexpired of the term of 1000 years therein created by an indenture dated, &c., and made, &c., UPON trusts and subject to powers and provisions corresponding as nearly as the law and circumstances will permit with the uses, trusts, powers, and provisions to, on, and subject to which the hereditaments and premises firstly hereinbefore described have been conveyed as aforesaid: YET SO, NEVERTHELESS, that the beneficial interest in the said leasehold premises shall not vest absolutely in any person who by the said indenture of settlement is made by purchase tenant in tail male, and who shall die under the age of twenty-one years, but shall on the death of such person go as the said hereditaments firstly hereinbefore described would go.

CONVEYANCE, &C., WITH MONIES FROM SALE BY TENANT FOR LIFE UNDER SETTLED LAND ACT.

To hold leaseholds to trustees upon trusts of freeholds comprised in settlement, except as therein mentioned.

IN WITNESS, &c.

No. LXXXVIII.

CONVEYANCE *by an* OWNER *in* FEE SIMPLE *to a* PURCHASER, *reserving to the* VENDOR *an* ESTATE *during his* LIFE—COVENANTS *by the* VENDOR *to* REPAIR *and* INSURE *during his* LIFE, *and provisions as to* TIMBER.

CONVEYANCE RESERVING LIFE ESTATE TO VENDOR.

THIS INDENTURE, made the —— day of ——, BETWEEN A. B. of, &c. (*vendor*), of the one part, and C. D. of, &c. (*purchaser*), of the other part: WHEREAS the said A. B. has agreed to sell to the said C. D. a reversionary estate in fee simple, to commence on the death of the said A. B., in the hereditaments hereinafter described, at the price of £——, and it has been agreed that such sale shall be carried into effect by a conveyance to the uses and in the manner hereinafter expressed: NOW THIS INDENTURE WITNESSETH, that in consideration, &c. (*the receipt, &c.*), the said A. B., as beneficial owner, hereby conveys unto the said C. D. ALL, &c. (*parcels*), TO

Parties.

Agreement for sale of reversionary estate in fee simple.

Witnessing part.

Vendor conveys

CONVEYANCE RESERVING LIFE ESTATE TO VENDOR.

HOLD the same unto the said C. D. in fee simple, To the use of the said A. B. during his life, and after his decease To THE USE of the said C. D. in fee simple: AND THE SAID A. B. hereby covenants with the said C. D., that the said A. B. will at his own expense during his life keep in good and complete repair and condition the capital messuage called ——, and all other the buildings and erections for the time being upon the said premises hereby conveyed, and also all the gates, stiles, and fences upon the premises hereby conveyed; And also will at the like expense during his life adequately insure and keep insured the said capital messuage, and all other the buildings and erections for the time being standing upon the said premises, against loss or damage by fire, in some office or offices in London or Westminster; and also will, when required, produce to the said C. D., his heirs or assigns, or his or their agent, the policies of such insurance, and the receipts for the current year's premiums paid thereon: and also will forthwith, on every occasion on which moneys shall be received by virtue of any such insurance, lay out and expend the same (after deducting necessary expenses) in properly repairing, rebuilding, or reinstating the buildings which shall have been destroyed or damaged: AND ALSO that the said A. B., will not during his life fell or cut down any timber or timber-like trees standing or growing on the said premises hereby conveyed, unless the same may be required for renewing or repairing the park palings, and then only such as may be properly and fairly felled or cut down without detracting from the enjoyment of the said mansion-house as a place of residence, or the beauty of the said premises hereby conveyed, or unless such timber or trees shall be of such age and in such state as that considered as ornamental timber only the same may properly require to be felled or cut down with a view to the enjoyment of the said mansion-house as a place of residence or the beauty of the said premises hereby conveyed, but so nevertheless that all timber and timber-like trees properly felled or cut down as aforesaid, and the proceeds thereof, shall belong to the said A. B. PROVIDED ALWAYS, that the said A. B., or his assigns, shall give to the said C. D., his heirs or assigns, at least one calendar month's previous notice in writing of the intention of the said A. B., or his assigns, to cut any timber or timber-like trees under the provisions herein-

to purchaser and his heirs to use of vendor for life with remainder to use of purchaser in fee.

Covenants by vendor to keep in repair buildings during his life

and keep insured against fire,

not to cut timber except such as ought to be cut.

Vendor to give notice before cutting timber.

before contained, and that the trees intended to be cut or felled shall be marked, and shall be shown when required to some person appointed for the purpose by the said C. D., his heirs or assigns; and in case such person shall, on behalf of the said C. D., his heirs or assigns, object to the felling or cutting of any trees, as being improper and coming within the restrictions aforesaid, the same shall not be felled or cut unless and until it shall have been decided by arbitration, as hereinafter provided, that the same may be felled or cut. PROVIDED ALSO, and it is hereby agreed and declared, that if any question or difference shall arise between the said A. B. or his assigns and the said C. D., his heirs or assigns, as to whether any timber or timber-like trees are such as may be properly felled or cut down having regard to the covenant and restrictions aforesaid, such question or difference shall be referred to two arbitrators, or their umpire, pursuant to and so as, with regard to the mode and consequences of the reference and in all other respects, to conform to the provisions in that behalf contained in the "Common Law Procedure Act, 1854," or any then subsisting modification thereof.

CONVEYANCE RESERVING LIFE ESTATE TO VENDOR.

Arbitration clause.

IN WITNESS, &c.

No. LXXXIX.

CONVEYANCE *by an* OWNER *in* FEE *to a* RAILWAY COMPANY (*a*).

CONVEYANCE TO RAILWAY COMPANY.

THIS INDENTURE, made the —— day of ——, BETWEEN A. B. of, &c. (*vendor*), of the one part, and the —— Railway

Parties.

(*a*) By the "Lands Clauses Consolidation Act, 1845" (8 Vict. c. 18), power is given to the promoters of undertakings to purchase lands of the owners by agreement (s. 6).

Power to purchase by agreement.

Parties having only partial interests, or being under disability, are empowered to sell to the Company (ss. 7, 22, 25, 38), and the purchase-money or compensation in such cases is to be ascertained either by the verdict of a jury, or arbitration, or by valuation (s. 9), and must be paid into the Bank of England if it amounts to £200 (s. 69); and if it exceeds £20, but does not amount to £200, then into the Bank, or to trustees to be nominated as therein mentioned, according to the directions of the Act (s. 71), and to be applied as therein directed (ss. 69, 73, 74). Upon the deposit of the pur-

Parties under disability able to sell

CONVEYANCE TO RAILWAY COMPANY.

Company of the other part: WHEREAS by "the —— Railway Act, 18—," in which Act the Lands Clauses Consolidation Act, 1845, is incorporated, the said Company is empowered to take and purchase for the purposes of the railway and works thereby

Recite Railway Act.

chase-money or compensation in the Bank, all such persons are required to convey the purchased lands to the Company, and in default thereof the Company is empowered to execute a deed poll, which is to have the effect of a conveyance of all the estate in such lands capable of being sold to the Company (s. 75).

Payment of sum belonging to tenant in tail.

When a sum paid into the Bank under this Act belongs to a tenant in tail in possession, he must execute a disentailing deed before the Court will pay it out to him. (*Re* Butler's Will, L. R. 16 Eq. 479; *Re* Reynolds, 3 C. D. 61.)

Costs.

The Company bears the costs of all conveyances, as well on the part of the vendor as of the purchaser, and of the deducing and evidencing the title to the lands, and also of all abstracts and attested copies which they may require (s. 82).

Limit of time for compulsory purchase.

The powers of the promoters for the compulsory purchase of lands for the purposes of the special Act cannot be exercised after the expiration of the prescribed period; and if no period is prescribed, not after the expiration of three years from the passing of the special Act (s. 123).

Conveyance of copyholds.

All conveyances of copyhold lands under the "Lands Clauses Consolidation Act" must be entered on the rolls of the manor, and on the payment of the steward's fees he is required to make such enrolment; and it is declared, that within three months after the enrolment of such conveyance, or within one month after the lands shall be entered on by the Company, the promoters shall procure the copyhold lands to be enfranchised, and shall apply to the lord of the manor for this purpose, and shall pay a compensation in respect thereof, as provided by the Act (ss. 95, 96).

Clauses as to copyholds, lands in mortgage and underlease.

The 98th section provides for the apportionment of copyhold rents when part only of the land subject to the rent is required. The 108th and six following sections relate to lands in mortgage; and the 119th and three following sections provide for the apportionment of the rents where part only of lands under lease are taken, and for the compensation to be made to tenants.

Sale of superfluous lands after the expiration of the time.

As to superfluous lands, or, in other words, lands not required for the purposes of the undertaking, the Company is required within the prescribed period, or if no period be prescribed, within ten years after the expiration of the time limited by the special Act for the completion of the works, to sell such superfluous lands, giving, notwithstanding, a right of pre-emption (unless the lands be situate within a town, or be lands built upon or used for building purposes) first to the person then entitled to the lands (if any) from which the same were originally severed, if such person can be found, or if he refuse to purchase or cannot be found, then to the person or persons whose lands may immediately join the lands proposed to be sold. The persons to whom the offer of sale is made, if desirous of availing themselves of this right of pre-emption, are *required* to signify such their desire within six weeks after the offer of sale is made to them respectively (ss. 127, 128, 129).

The question whether land is to be deemed superfluous within this section must be determined at the expiration of the ten years. If it is not superfluous then, but becomes so afterwards, the section does not apply (South Western Railway *v.* Marg, L. R. 7 H. L. 283). Land is superfluous within the section if at the end of the ten years it is not then

CONVEYANCE TO RAILWAY COMPANY.

Agreement by company to purchase.

authorized, the pieces of land and hereditaments intended to be hereby conveyed: AND WHEREAS the said Company has agreed to purchase from the said A. B. the said pieces of land and hereditaments for the sum of £——, which sum is to include and be in full compensation for all damage to be sustained by the said A. B. by reason of the severing of such lands from the remainder of the estate to which the same belong, or otherwise injuriously affecting such lands by the execution of the works of the said Company, and also for all right to require the said Company, under or by force of the Railways Clauses Consolidation Act, 1845, to make and maintain such works as are in the same Act referred to, and otherwise might be required to be made and maintained for the accommodation of the owners and occupiers of the lands adjoining to the pieces of land intended to be hereby conveyed (*b*): NOW THIS INDENTURE WITNESSETH, that in consideration of the sum of £—— to the said A. B. paid by the said company on or before the execution of these presents (*the receipt, &c.*), The said A. B., as beneficial owner, hereby conveys to the said Company ALL those two pieces or parcels of land situate in the parish of ——, in the county of ——, containing respectively —— and ——, and being respectively parts of two closes of meadow ground called respectively —— and ——, and distinguished in the plan and books of reference of the said railway, deposited in the office of the clerk of the peace for the said county of ——, so far as relates to the said parish of ——, by the Nos. —— and ——, And which pieces of land intended to be hereby conveyed are delineated in the plan drawn in the margin of these presents, and are therein

Witnessing part.

Vendor conveys parcels,

wanted for the purpose of the railway, and there are no purposes in connection with the railway for which it can reasonably be expected that the land will be wanted afterwards (Hooper *v.* Bourne, 5 App. Ca. 1; Betts *v.* Great Eastern Railway Co., 3 Ex. D. 182).

Where there are several properties adjoining to the land which is superfluous, it should be divided among the several owners in proportion to the frontage of each (Moody *v.* Corbett, L. R. 1 Q. B. 510). As to what are lands situate within a town, see Lord Carrington *v.* Wycombe Railway Co., L. R. 3 Ch. 377. The surface over a tunnel is not superfluous land within the section (In re Metropolitan Railway Co. and Cosh, 13 Ch. D. 607).

A railway company in order to improve its property may sell its superfluous lands subject to restrictive covenants as to user (In re Higgins' Contract, 21 Ch. D. 95).

(*b*) If a further sum is to be paid for severance, and is assessed separately, there should be a separate receipt for it; and it will be unnecessary to refer to it in the conveyance.

CONVEYANCE TO RAILWAY COMPANY.

coloured red; TOGETHER WITH all ways, rights, and appurtenances thereto belonging (*c*): AND ALL such estate, right, title and interest in and to the same and every part thereof, as the said A. B. is or shall become seised or possessed of, or is by the said —— Railway Act, 18—, or any Act therein incorporated, empowered to convey (*d*): TO HOLD the same to the said Company, their successors and assigns, for ever, according to the true intent and meaning of the said —— Railway Act, 18—, AND THE SAID A. B. hereby acknowledges the right of the said Company to production of the documents of title mentioned in the schedule hereto and to delivery of copies thereof, and hereby undertakes for the safe custody thereof.

and all the estate,

to railway company.

Vendor gives acknowledgment and undertaking.

IN WITNESS, &c.

THE SCHEDULE ABOVE REFERRED TO.

No. XC.

CONVEYANCE BY TENANT FOR LIFE TO RAILWAY COMPANY.

CONVEYANCE *by* TENANT *for* LIFE *to a* RAILWAY COMPANY.

Parties.

THIS INDENTURE, made the —— day of ——, BETWEEN A. B. of, &c. (*vendor*), of the one part, and the —— Railway Company incorporated by the —— Railway Act, 18—, of the other part (*Recite instrument under which A. B. is tenant for life*): AND WHEREAS the piece of land and hereditaments hereinafter described and intended to be hereby conveyed, are required for the purpose of the undertaking authorized by the said —— Railway Act: AND WHEREAS the said A. B., pursuant to the power in this behalf conferred upon him by the Lands Clauses Consolidation Act, 1845, which is in-

That land is required for purpose of railway.

Agreement by tenant for life to sell,

(*c*) If the mines are included in the purchase, it is necessary to mention them, otherwise they will not pass. See 8 Vict. c. 20, s. 77.

(*d*) The words "and all the estate, &c." are retained because it is desirable to keep as nearly as possible to the form given in the schedule to the Lands Clauses Act.

CONVEYANCE BY TENANT FOR LIFE TO RAILWAY COMPANY.

corporated in the said —— Railway Act, 18—, has agreed to sell to the said Company the said piece of land and hereditaments, and hath agreed to accept the sum of £—— as the purchase-money thereof, and the further sum of £—— as and by way of compensation for the damage to be sustained by him and his successors in title, owners of the said lands, by reason of the severing of the said lands from the remainder of the estate to which the same belong, or otherwise injuriously affecting such lands by the exercise of the powers of such Railway Act, or any Act incorporated therewith, the said sums of £—— and £—— respectively being the sums determined as such purchase and compensation money respectively, by the valuation in writing dated the —— day of ——, of C. D. of, &c., and E. F. of, &c., two able practical surveyors, the said C. D. being nominated by the said A. B., and the said E. F. being nominated by the said Company, pursuant to the provisions in that behalf contained in the said Lands Clauses Consolidation Act, 1845: NOW THIS INDENTURE WITNESSETH, that in order to carry into effect the said agreement for sale, and in consideration of the sum of £—— (*a*) (the aggregate of the said two sums of £—— and £—— respectively) paid into the Bank of England to the account and with the privity of the Paymaster-General (*b*) *ex parte* the —— Railway Company, pursuant to the said —— Railway Act, 18—, by the said —— Railway Company, the said A. B., as to his estate for life in the hereditaments hereinafter described as beneficial owner, and as to the fee simple of the said hereditaments by force and virtue of the said Acts, hereby conveys to the said Company, ALL, &c. (*parcels*): TOGETHER WITH all ways, rights, and appurtenances thereto belonging: AND ALL SUCH ESTATE, right, title, and interest in and to the same as the said A. B. now is or shall become seised or possessed of, or is by the said Acts empowered to convey: TO HOLD the same unto the said Company, their successors and assigns, for ever, according to the

at separate sums for purchase-money and compensation for severance,

such sums having been determined by valuation of surveyors.

Witnessing part.

Consideration.

Vendor conveys parcels

to railway company.

(*a*) Money paid into court under any Act and liable to be laid out in land may be invested in any of the securities in which capital money under the Settled Land Act may be invested. Settled Land Act, 1882, sec. 32.

(*b*) By the 35 & 36 Vict. c. 44, it is enacted that the office of the Accountant-General of the Court of Chancery shall be abolished from the 6th August, 1872, and that his duties and powers shall thereafter be performed by Her Majesty's Paymaster-General. See ss. 4, 6.

CONVEYANCE BY TENANT FOR LIFE TO RAILWAY COMPANY.

true intent and meaning of the said Act: And the said A. B. hereby acknowledges the right of the said Company to production of the documents of title mentioned in the schedule hereto, and to delivery of copies thereof, and undertakes for the safe custody thereof.

In witness, &c.

The Schedule above referred to.

No. XCI.

CONVEYANCE OF COPYHOLDS TO RAILWAY COMPANY.

CONVEYANCE *by an* Owner *in* Fee *of* Copyholds *to a* Railway Company.

Consideration.

KNOW ALL MEN BY THESE PRESENTS, that I, A. B. of, &c. (*vendor*), in consideration of the sum of £—— as purchase-money to me paid by the —— Railway Company, do hereby, in execution of the powers for this purpose given me by the —— Railway Act, and the public Acts incorporated therewith, convey to the said Company, their successors and assigns, All, &c. (*here describe the parcels*), Together with all ways, rights, and appurtenances thereto belonging, And all such estate, right, title, and interest in and to the same, and the timber thereupon and the minerals thereunder, as by the said Acts or otherwise I am empowered to convey, To hold the premises to the said Company, their successors and assigns, for ever, according to the true intent and meaning of the said Act.

Conveyance by owner of copyholds.

To hold to company.

In witness, &c.

No. XCII.

CONVEYANCE *by a* RAILWAY COMPANY *of* SUPERFLUOUS LANDS *to a* PURCHASER (*b*).

CONVEYANCE BY RAILWAY COMPANY OF SUPERFLUOUS LANDS.

THIS INDENTURE, made, &c., BETWEEN the —— Railway Company, incorporated by the —— Railway Act, 18—, of the one part, and A. B. of, &c. (*purchaser*), of the other part: WHEREAS, under the powers of the said —— Railway Act, 18— (in which Act the Lands Clauses Consolidation Act, 1845, is incorporated), the said Company some time since purchased from X. Y. of, &c., certain pieces of land and hereditaments, of which the land and hereditaments intended to be hereby granted form part, and the same land and hereditaments were accordingly conveyed to the said Company by an indenture dated the —— day of ——, and made between the said X. Y. of the one part, and the said Company of the other part: AND WHEREAS the —— day of ——, 1870, is the time limited by the said —— Railway Act, 1860, for the completion of the works thereby authorized: AND WHEREAS the land and hereditaments intended to be hereby granted are not required for the purposes of the said Railway Act: AND WHEREAS the said X. Y. died on the —— day of —— intestate, leaving C. D. of, &c., and E. F. of, &c., his co-heiresses at law, and the said C. D. and E. F. are the persons now entitled to the lands from which the said lands and hereditaments intended to be hereby granted were severed, and are also owners of the lands immediately adjoining to the last-mentioned lands and hereditaments: AND WHEREAS N. O. of, &c., a person not interested in the matter in question, has made a declaration in writing, dated the —— day of ——, before P. Q. of, &c., a justice of the peace for the county of ——, not interested in the said matter, and has thereby declared that an offer to sell the land and hereditaments intended to be hereby granted was duly made by the said Company to the said C. D. and E. F. on the —— day of ——, and that such offer was not accepted by the said C. D. and E. F., or either of them, within six weeks of making the same: AND WHEREAS since the date of the said de- Agreement

Parties.

Recite purchase by and conveyance to the railway company.

Day fixed by the Railway Act for completion of works.

That land is not required by railway company.

Title of C. D. and E. F. to adjoining lands.

Declaration of offer to sell to C. D. and E. F.

(*b*) See *suprà*, p. 338, note.

CONVEYANCE BY RAILWAY COMPANY OF SUPERFLUOUS LANDS.

claration the said Company have agreed to sell to the said A. B. the land and hereditaments intended to be hereby granted, at the price of £——: NOW THIS INDENTURE WITNESSETH, that in pursuance of the said agreement, and in consideration of the sum of £—— to the said Company paid by the said A. B. (*the receipt, &c.*), the said —— Company hereby grants (*c*) unto the said A. B., ALL, &c. (*parcels*): TO HOLD the same unto and to the use of the said A. B. in fee simple.

for sale to A. B.

Witnessing part.

Consideration.

Railway company convey to purchaser.

IN WITNESS, &c.

No. XCIII.

CONVEYANCE TO SCHOOL BOARD.

CONVEYANCE *by a* TENANT FOR LIFE *of a* PIECE OF LAND *to a* SCHOOL BOARD (*a*).

Parties.

THIS INDENTURE, made the —— day of ——, BETWEEN A. B. of, &c. (*vendor*), of the first part, C. D. of, &c., and E. F. of, &c. (*trustees*), of the second part, and the School Board for —— of the third part: WHEREAS under the will of X. Y. of, &c., the said A. B. is tenant for life of the piece of land intended to be hereby conveyed with remainders over: AND WHEREAS the said School Board, being desirous of acquiring the said piece of land as a site for a school, has, under the powers in that behalf vested in the said Board by the Elementary Education Act, 1870, agreed with the said A. B. for the purchase of the fee simple thereof for the sum of £100, which sum has been determined to be not less than the value thereof by the valuation in writing of G. H. of, &c., and I. K. of, &c., two able practical surveyors, the said G. H. being nominated by the said A. B., and the said I. K. being nominated by the said School Board, and which said G. H. and I. K. have annexed to their valuation

Recite that A. B. is tenant for life.

Agreement by School Board to purchase.

(*c*) By the Lands Clauses Consolidation Act, 1845, s. 132, it is provided, that in conveyances of land by the promoters of the undertaking, the word "grant" shall operate as express covenants for title and for further assurance.

(*a*) School Boards are empowered by the 19th section of the "Elementary Education Act, 1870," to provide school houses, and improve, enlarge, and fit up any school house provided by them, and to purchase and take on lease any land and any right over land.

a declaration in writing subscribed by them of the correctness thereof: AND WHEREAS by a writing dated the —— day of ——, under the hand of the said A. B., the said C. D. and E. F. have been nominated trustees to receive the purchase-money, and such nomination is approved of by the said School Board, as the said School Board doth hereby declare: NOW THIS INDENTURE WITNESSETH, that in pursuance of the said agreement, and in consideration of the sum of £100 to the said C. D. and E. F. as such trustees as aforesaid paid by the said School Board, on or before the execution of these presents (the receipt whereof the said C. D. and E. F. hereby acknowledge) (*b*), the said A. B. as to his estate for life in the hereditaments hereinafter described, as beneficial owner, and as to the fee simple of the said hereditaments by force and virtue of the said Act, or any Act incorporated therewith, hereby conveys unto the said School Board, ALL THAT, &c. (*parcels*), TOGETHER with all ways, rights, and appurtenances thereunto belonging; AND ALL such estate, right, title, and interest in and to the same as the said A. B. now is or shall become possessed of or is by the said Act empowered to convey: To HOLD the same unto the said School Board, their successors and assigns, for ever, according to the true intent and meaning of the said Act.

CONVEYANCE TO SCHOOL BOARD.

Appointment of trustees to receive the purchase-money.

Witnessing part.

Vendor conveys

parcels

to School Board.

IN WITNESS, &c.

No. XCIV.

CONVEYANCE *of* LAND *for* BUILDING *in* CONSIDERATION *of a* PERPETUAL RENT-CHARGE (*bb*). COVENANTS *by* GRANTEE *to* BUILD *thereon, and to* INSURE *and* KEEP *in* REPAIR BUILDINGS *and other* COVENANTS *in* CONNECTION *with the* BUILDINGS (*a*).

BUILDING GRANT.

THIS INDENTURE, made, &c., BETWEEN A. B. of, &c. (*vendor*), of the one part, and C. D. of, &c. (*purchaser*), of the

Parties.

(*b*) If the purchase-money amounts to £200, this sum must be paid into the Bank of England, to the account and with the privity of the Paymaster-General for the time being, on behalf of the High Court of Justice, Chancery Division.

(*bb*) The stamp on this deed will be £1, *suprà*, p. 215.

(*a*) Grants at a fee farm rent, as they are usually called, are common in

Position of a grantor of

BUILDING GRANT.

other part: WITNESSETH, that in consideration of the rent hereinafter limited, and of the covenants of the said C. D. hereinafter contained, the said A. B., as beneficial owner, hereby conveys unto the said C. D. ALL THAT piece of land situate, &c., and containing, &c., being part of an estate of the said A. B. known as the —— estate, which has been laid out for building purposes, and which piece of land intended to be hereby conveyed is delineated in the plan drawn in the margin of these presents and is therein coloured pink, the remainder of the estate being also shown on the said plan and therein coloured yellow: TOGETHER with the messuage or dwelling-house now in course of erection on the said piece of land: TO HOLD the same unto the said C. D., in fee simple, TO THE USE that the said A. B. shall have, in fee simple, a perpetual yearly rent-charge of £10, issuing out of the said hereditaments and premises, and payable by two equal half-yearly payments on the —— day of —— and the —— day of —— in every year, the first half-yearly payment thereof to be made on the —— day of —— next (*b*), AND SUBJECT to the said rent-charge, TO THE USE of the said C. D. in fee simple: AND THE SAID C. D. hereby covenants

Grantor conveys parcels

to use that grantor may receive perpetual rent-charge.

and subject thereto to use of grantee in fee.

land at a fee farm rent inferior to that of lessor.

Manchester, Bristol, and Bath, and a few other places, and some Precedents of them are therefore inserted. But as will appear from the following notes, the position of the grantor, as regards his remedies for the performance of the grantee's covenants, is decidedly inferior to that of a lessor upon a lease for a long term, say 999 years.

(*b*) It has been usual to add powers of distress and entry in case default should be made in payment of the rent-charge, but it is no longer necessary to insert these powers, as in instruments coming into operation after the 31st December, 1881, they will be implied by the Conveyancing Act, 1881, sect. 44, which also gives to the grantee of the rent a power to demise the land charged to a trustee for a term of years for additionally securing the payment of the rent and arrears, and the costs occasioned by non-payment thereof. The clause is as follows:—

Remedies for recovery of annual sums charged on land.

"(1) Where a person is entitled to receive out of any land, or out of the income of any land, any annual sum, payable half-yearly or otherwise, whether charged on the land or on the income of the land, and whether by way of rentcharge or otherwise, not being rent incident to a reversion, then, subject and without prejudice to all estates, interests, and rights having priority to the annual sum, the person entitled to receive the same shall have such remedies for recovering and compelling payment of the same as are described in this section, as far as those remedies might have been conferred by the instrument under which the annual sum arises, but not further.

"(2) If at any time the annual sum or any part thereof is unpaid for twenty-one days next after the time appointed for any payment in respect thereof, the person entitled to receive the annual sum may enter into and distrain on the land charged or any part thereof, and dispose according to law of any distress found, to the intent that thereby or otherwise the annual

BUILDING GRANT.

with the said A. B., his heirs and assigns (*c*) in manner following (that is to say), THAT the said C. D., his heirs or assigns, will at all times hereafter pay the said yearly rent-charge at the times hereinbefore appointed for payment thereof; AND also will within twelve calendar months next after the date of these presents, at his or their expense, under the inspection and to the satisfaction of the architect for the time being of the said A. B., his heirs or assigns, complete so as to be fit for habitation the messuage or dwelling-house now in course of erection upon the said piece of land, the said messuage or dwelling-house to be, when completed, of the value of £—— at least, and also will, at the request of the said A. B., his heirs or assigns, produce to him or them full and satisfactory vouchers of expenditure to

Covenants by grantee to pay rent.

To complete a dwelling-house within twelve calendar months,

to produce

sum and all arrears thereof, and all costs and expenses occasioned by nonpayment thereof, may be fully paid.

"(3) If at any time the annual sum or any part thereof is unpaid for forty days next after the time appointed for any payment in respect thereof, then, although no legal demand has been made for payment thereof, the person entitled to receive the annual sum may enter into possession of and hold the land charged or any part thereof, and take the income thereof, until thereby or otherwise the annual sum and all arrears thereof due at the time of his entry, or afterwards becoming due during his continuance in possession, and all costs and expenses occasioned by nonpayment of the annual sum, are fully paid; and such possession when taken shall be without impeachment of waste.

"(4) In the like case the person entitled to the annual charge, whether taking possession or not, may also by deed demise the land charged, or any part thereof, to a trustee for a term of years, with or without impeachment of waste, on trust, by mortgage, or sale, or demise, for all or any part of the term, of the land charged, or of any part thereof, or by receipt of the income thereof, or by all or any of those means, or by any other reasonable means, to raise and pay the annual sum and all arrears thereof due or to become due, and all costs and expenses occasioned by nonpayment of the annual sum, or incurred in compelling or obtaining payment thereof, or otherwise relating thereto, including the costs of the preparation and execution of the deed of demise, and the costs of the execution of the trusts of that deed; and the surplus, if any, of the money raised, or of the income received, under the trusts of that deed shall be paid to the person for the time being entitled to the land therein comprised in reversion immediately expectant on the term thereby created.

"(5) This section applies only if and as far as a contrary intention is not expressed in the instrument under which the annual sum arises, and shall have effect subject to the terms of that instrument and to the provisions therein contained.

"(6) This section applies only where that instrument comes into operation after the commencement of this Act."

(*c*) It is intended that the benefit of the covenants shall run either with the rent or the adjoining land retained by the grantor, *as far as is possible*. The words "his heirs and assigns" are retained, so as to prevent any question as to whether sect. 58 of the Conveyancing Act, 1881, applies.

BUILDING GRANT.

the value aforesaid: AND ALSO will at all times hereafter keep the said messuage or dwelling-house, and all boundary walls and drains belonging thereto, in good and tenantable repair and condition, and will permit the said A. B., his heirs or assigns, and all persons authorised by him or them, once in every year in the daytime, on giving to the tenant or occupier for the time being of the said messuage one week's notice in writing of his or their intention so to do, to enter into and upon the said messuage and proceed to examine the condition thereof: AND ALSO will at all times insure and keep insured against loss or damage by fire the said messuage or dwelling-house in the —— office, or some other public insurance office in the sum of £—— at least, and will on demand produce to the said A. B., his heirs or assigns, the policy or policies of insurance, and the receipt for the premium payable in respect thereof for the current year, and will whenever any loss or damage by fire shall happen to the said messuage or dwelling-house or any part thereof forthwith expend the money received under such insurance as aforesaid, and also such other moneys as may be necessary for the purpose in re-building or re-instating the same (*d*): AND ALSO, that the said C. D., his heirs or assigns, will not alter or permit to be altered the external plan or elevation of the said messuage or dwelling-house without the previous consent in writing of the said A. B., his heirs or assigns, nor will without such consent as aforesaid erect upon the said piece of land any other messuage or building than the said messuage or dwelling-house now in course of erection as aforesaid except a stable, or coach-house, or green-houses, or conservatories, in connection therewith: AND ALSO that the said C. D., his heirs or assigns, will not at any time without such consent as aforesaid carry on, or permit to be carried on upon the said premises, any trade or business whatsoever, or use or permit the same to be used for any other purpose than as a private dwelling-house: [AND IT IS HEREBY DECLARED (*e*) that the restrictive covenants

vouchers of expenditure,

to insure against fire,

to pay premiums of insurance, and produce policy and receipts.

Not to alter external elevation without consent.

Not to erect other building or

carry on any trade without consent.

Declaration that

(*d*) The covenants to build, repair, and insure, &c., do not run as to the burden of them with the land nor as to the benefit of them with the rent, and cannot be made to do so either at law or in equity. Consequently an assign of the rent cannot sue, nor can an assign of the land be sued on them. (Haywood *v.* Brunswick Building Society, 8 Q. B. D. 403.)

Covenants to build, repair, &c., in fee farm grant do not run with land.

(*e*) The restrictive covenants in the above Precedent are intended to prevent the value of the land retained by the grantor from being depreciated

Restrictive covenants, how, and by

hereinbefore contained are entered into with the said A. B. as the owner of the remainder of the said —— estate of which the land hereby conveyed forms part, and that the benefit of them may be assigned by the said A. B., his heirs or assigns, to any future purchaser or purchasers of any part of the estate which may be prejudicially affected by the breach thereof:] PROVIDED ALWAYS (*f*), and it is hereby declared, that if the said yearly rent of £——, or any part thereof, shall be in arrear and unpaid for the space of twelve calendar months next after either of the said half-yearly days of payment hereinbefore appointed for payment thereof, or if there shall be a breach of any of the covenants hereinbefore contained on the part of the said C. D., his heirs or assigns, then and in any such case, and notwithstanding the waiver of any previous default or breach, it shall be lawful for the said A. B., his heirs or assigns, owner or owners for the time being of the said rent at any time during the lives of the said A. B. and C. D., and of —— and ——, or the life of any or either of them, or within twenty-one years after the death of the last survivor of them, or (if the rule against perpetuities permits this extension of the power) at any time afterwards, into and upon the said premises hereby conveyed, or any part thereof, in the name of the whole, to re-enter, and the same thenceforth to repossess and enjoy, as if these presents had not been made.

BUILDING GRANT.

restrictive covenants are entered into with grantor as owner of land retained by him.

Power for grantor to re-enter on non-payment of rent or breach of covenants.

IN WITNESS, &c.

by the acts prohibited. They can be enforced by injunction against the grantee, and all persons deriving title under him by purchase or otherwise with notice. The above clause is inserted to prevent any doubt as to whether the benefit of the covenants can be assigned to purchasers of parts of the retained land. See p. 347, *supra*.

and against whom they can be enforced.

(*f*) This right of re-entry is inserted as an additional security for the rent, because if the house is suffered to fall into decay it is probable that the value of it will not cover the rent. It is doubtful, however, whether the right can be assigned by the grantor to any person to whom he may afterwards convey the rent. The Act 8 & 9 Vict. c. 106, sect. 6, enables the disposition by deed of (*inter alia*) "a right of entry whether immediate or future, and whether vested or contingent, into or upon any tenements or hereditaments of any tenure." In Hunt *v.* Bishop (8 Exch. 680, on appeal as Hunt *v.* Remnant, 9 Exch. 640), two of the Judges expressed opinions that the above enactment does not apply to a right of entry for a condition broken, but the actual decision was merely that the Act did not authorise the assignment of the right to re-enter for a breach which had already happened.

Right of re-entry, whether it can be assigned so as to go with rent, quære.

Sect. 14 of the Conveyancing Act, 1881, enabling the Court to relieve against rights of re-entry or forfeiture for breach of covenants, extends to a grant at a fee farm rent (sub-sect. 3).

Court may relieve against forfeiture for breach of covenants in fee farm grants.

No. XCV.

GRANT BY TENANTS IN COMMON IN CONSIDERATION OF PERPETUAL RENT.

CONVEYANCE *by* TENANTS *in* COMMON *of* LAND *and three* DWELLING-HOUSES *which have been* ERECTED *thereon by the* GRANTEE *in* CONSIDERATION *of a perpetual* RENT-CHARGE—COVENANTS *by the* GRANTEE *to pay* RENT *to* INSURE *and* REPAIR, *and* NOT *to* CARRY *on* OFFENSIVE TRADES, *and* COVENANTS *by* GRANTORS *to* INDEMNIFY *against* PARAMOUNT RENT.

Parties. THIS INDENTURE, made, &c., BETWEEN A. B. of, &c., and C. D. of, &c., being tenants in common in equal shares of the hereditaments hereinafter conveyed (*grantors*), of the one part, and E. F. of, &c. (*grantee*), of the other part, WITNESSETH, that in consideration of the expense which has been incurred by the said E. F. in the building of the messuages intended to be hereby conveyed, and in consideration also of the yearly rent hereinafter limited, and of the covenants of the said E. F. hereinafter contained, the said A. B. as to one undivided moiety of the hereditaments hereinafter conveyed as beneficial owner, and as to all other (if any) his estate and interest therein, and the said C. D., as to one other undivided moiety of the said hereditaments, as beneficial owner, and as to all other (if any) his estate and interest therein, do hereby convey unto the said E. F., ALL THAT plot of land situate in the parish of ——, in the county of ——, which plot of land is delineated in the plan drawn on the —— skin of these presents, and is therein coloured ——: AND ALL THOSE three messuages, lately erected by the said E. F., and now standing on the same plot known by the name of —— cottages, and in the several occupations of ——, and ——, and ——: TO HOLD the same unto the said E. F. in fee simple: TO THE USE that the said A. B. and C. D. shall have, in fee simple, in equal shares as tenants in common, a perpetual yearly rent-charge of £——, issuing out of the said land, and payable by equal half-yearly payments on the —— day of ——, and the —— day of —— in every year, the first half-yearly payment thereof to be made on the —— day of

Grantors convey plot of land, and three messuages thereon, to grantee.

To use that grantors may receive in equal shares perpetual rent-charge.

—— next (*a*), AND subject to the said rent-charge TO THE USE of the said E. F. in fee simple: AND THE SAID E. F. hereby covenants with the said A. B. and C. D., their heirs and assigns, in manner following (that is to say): THAT the said E. F., his heirs or assigns, will pay the said yearly rent-charge at the times hereinbefore appointed for payment thereof: AND ALSO will at all times keep the messuages and buildings hereby conveyed insured against loss or damage by fire, in some well-established insurance office, in a sum equal to two-third parts of the value thereof, and will, whenever required, produce to the said A. B. and C. D., their heirs or assigns, the policy of such insurance, and the receipt for the premiums and sums payable thereon, and in case of damage by fire will rebuild and reinstate the said premises within one year after the damage shall have occurred, and will apply for that purpose all sum or sums of money received under such insurance as aforesaid, and if the sum shall be insufficient will make up the deficiency out of his or their own money: AND ALSO, will at all times keep in tenantable repair the said messuages and buildings, and all the drains, fixtures and conveniences connected therewith: AND THAT it shall be lawful for the said A. B. and C. D., their heirs or assigns, or their agent or surveyor, once in every year, in the day time, after one week's previous notice of their intention so to do, to enter upon and view the condition of the said messuages and buildings: AND ALSO that the said E. F., his heirs or assigns, will not without the consent in writing of the said A. B. and C. D., their heirs or assigns, erect upon the said plot of ground hereby conveyed, any buildings other than the said messuages and buildings now standing thereon: AND that no wall bounding the said plot of ground shall be carried to a greater height than six feet from the ground floor of the said messuages, and that the boundary walls of the said plot may be used as party walls by any person or persons building on the adjoining plots of ground, he and they paying a proportionate part of the expense of keeping the same in repair: AND ALSO, that the said E. F., his heirs or assigns, will not at any time carry on or permit to be carried on upon the said premises any noisy, noisome

GRANT BY TENANTS IN COMMON IN CONSIDERATION OF PERPETUAL RENT.

Covenants by grantee to pay rent, to insure against fire,

to keep in repair.

Power for grantors to enter once a year.

Not to erect any other buildings without consent of grantor.

No wall to be erected higher than six feet.

Boundary walls may be used as party walls.

Not to carry on offensive trade.

(*a*) See note, *supra*, p. 346.

GRANT BY TENANTS IN COMMON IN CONSIDERATION OF PERPETUAL RENT.

or offensive trade or business (*power to A. B. and C. D., their heirs and assigns, to re-enter on non-payment of rent or breach of covenants, see last Precedent, suprà*, p. 349): AND THE SAID A. B. and C. D. hereby covenant with the said E. F., his heirs and assigns, THAT THE SAID A. B. and C. D., their heirs and assigns, will at all times hereafter pay the entirety of a certain yearly rent of £——, reserved by an indenture dated, &c., and made, &c., to which the hereditaments hereby conveyed, together with other property of great value, are liable under the same indenture, and also observe and perform the covenants and conditions in the last-mentioned indenture contained, and will at all times keep indemnified the said E. F., his heirs and assigns owners for the time being of the premises hereby conveyed from and against the same rent of £——, covenants and conditions, and all claims and demands on account thereof respectively: AND THAT whenever the said yearly rent of £——, or any portion thereof, shall be in arrear, or shall be paid by the said E. F., his heirs or assigns, or be raised out of the hereditaments hereby conveyed, or out of the rents and profits thereof, by reason of the default of the said A. B. and C. D., their heirs or assigns, to pay the same at the several times at which the same ought to be paid, according to the terms of the said indenture of the —— day of —— it shall be lawful for the said E. F., his heirs or assigns, to stop and suspend the payment of the said yearly rent of ——, or of any sums on account thereof, until the said yearly rent of £——, or any payment in respect thereof, shall cease to be so in arrear as aforesaid, or until all such sums as shall be so paid by the said E. F., his heirs or assigns, or shall be so raised as aforesaid, in consequence of such default as aforesaid, and all costs occasioned by any such default, shall be fully satisfied by the said A. B. and C. D., their heirs or assigns.

Covenant by grantors to indemnify against paramount rent.

IN WITNESS, &c.

No. XCVI.

APPOINTMENT *of* LAND *for* BUILDING *by* TENANT FOR LIFE *under a* POWER *in* CONSIDERATION *of a perpetual* RENT-CHARGE.

BUILDING APPOINTMENT BY TENANT FOR LIFE UNDER POWER.

THIS INDENTURE, made the —— day of ——, BETWEEN A. B. of, &c. (*grantor*), of the first part, and C. D. of, &c. (*grantee*), of the other part: WITNESSETH that the said A. B., as beneficial owner, by virtue of the power to him for this purpose limited by an indenture of settlement dated the —— day of ——, and made between, &c., and of every other power enabling him in this behalf, and in consideration of the perpetual yearly rent hereinafter limited, and the covenants of the said C. D. hereinafter contained, hereby appoints that ALL, &c. (*here describe the property to be appointed*): (EXCEPT and reserved out of this present appointment all springs of water, issuing, arising, or flowing out of, in, through, or upon the said plot of ground hereby appointed, or any part thereof, with liberty for the said A. B. and other the person or persons for the time being entitled to the said excepted premises under the limitations of the said indenture of settlement, to enter upon the said hereditaments and to make and maintain thereupon or therein any reservoirs and channels for conveying the said water from or through the same or any part thereof, and from time to time to alter and repair the same reservoirs and channels, paying to the owner or owners of the said premises for the time being, for all damage which may be done to him or them in the exercise of the powers hereby reserved), shall henceforth go, remain, and be To THE USES following (that is to say): To THE USE that the said A. B. and other the person or persons who under the limitations of the said indenture of settlement would for the time being be entitled to the hereditaments and premises hereby appointed, if these presents had not been made, may from and after the date of these presents for ever receive out of the hereditaments and premises hereby appointed, the yearly rent-charge of £——, to be paid by equal half-yearly payments, &c. (*a*):

Parties.

Tenant for life in exercise of power,

appoints parcels,

except springs of water.

To use that grantor and other persons entitled under settlement may receive rent-charge.

(*a*) See note, *suprà*, p. 346.

BUILDING APPOINTMENT BY TENANT FOR LIFE UNDER POWER.

AND THE SAID C. D. hereby covenants with the said A. B., and other the person or persons for the time being entitled to the said rent under the limitation aforesaid, that, &c. (*Covenants by grantee and power of re-entry, as in Precedent No. XCIV. mutatis mutandis.*) (*Proviso as to covenants for title when the tenant for life is not the settlor, suprà*, p. 298.)

Covenants by grantee, and power of re-entry.

IN WITNESS, &c.

No. XCVII.

GRANT AND SALE OF SEVERAL RENT-CHARGES.

GRANT *and* SALE *in* FEE *of several* RENT-CHARGES, EACH *of which is made* PAYABLE *out of separate* FREEHOLD *hereditaments.*

Parties.

THIS INDENTURE, made the —— day of ——, BETWEEN A. B. of, &c. (*vendor*), of the one part, and C. D. of, &c. (*purchaser*), of the other part: WHEREAS the said A. B. hath agreed with the said C. D. for the creation and sale to him of the several yearly rentcharges of £——, £——, and £——, intended to be hereby granted, and for securing the payment thereof respectively as hereinafter mentioned, at the price of £——: NOW THIS INDENTURE WITNESSETH, that in consideration, &c. (*the receipt, &c.*), the said A. B., as beneficial owner, hereby grants unto the said C. D. THE several yearly rent-charges next hereinafter mentioned (that is to say): ONE YEARLY RENT-CHARGE of £—— to be issuing and payable out of all that piece of land containing —— square yards or thereabouts delineated in the plan drawn in the margin of these presents, and therein coloured red, and numbered 1, and out of all that partly built messuage or tenement now standing on part of the said piece of ground, and known as number 1, —— Buildings, and out of all other buildings and erections now standing or to be hereafter built upon the same piece of ground or any part thereof: ALSO ONE YEARLY RENT-CHARGE of £—— to be issuing and payable out of all that piece of land contain-

Agreement for creation and sale of several rentcharges.

Vendor grants

one yearly rent-charge payable out of specific lands.

ing —— square yards or thereabouts, delineated in the plan drawn in the margin of these presents, and therein coloured yellow, and numbered 2, and out of all that partly built messuage or tenement now standing on part of the same piece of ground and known as number 2, —— Buildings, and out of all other buildings and erections now standing or to be hereafter built upon the same piece of ground or any part thereof: ALSO ONE YEARLY RENT-CHARGE of £—— to be issuing and payable out of all that piece of land containing —— square yards or thereabouts, delineated in the plan drawn in the margin of these presents, and therein coloured green, and numbered 3, and out of all that partly built messuage or tenement now standing on part of the same piece of ground and known as number 3, —— Buildings, and out of all other buildings and erections now standing or to be hereafter built upon the same piece of ground or any part thereof: ALL WHICH several pieces of land hereinbefore described lie contiguous to each other in the parish of ——, in the city of ——, and are bounded as an entire piece of land on, &c. (*here describe boundaries*), And all which several yearly rent-charges are to be paid and payable by equal half-yearly payments on the —— day of —— and the —— day of —— in every year, and the first of such half-yearly payments is to be made on the —— day of —— (*a*): TO HOLD the said rent-charges and premises unto and to the use of the said C. D., in fee simple: AND THE SAID A. B. hereby acknowledges the right of the said C. D. to production of the documents mentioned in the schedule hereto, and to delivery of copies thereof, and hereby undertakes for the safe custody thereof.

GRANT AND SALE OF SEVERAL RENT-CHARGES.

Another yearly rent-charge issuing out of other lands.

Another yearly rent-charge issuing out of other lands.

To purchaser in fee.

Vendor gives acknowledgment and undertaking.

IN WITNESS, &c.

THE SCHEDULE ABOVE REFERRED TO.

(*a*) See note, *suprà*, p. 346.

No. XCVIII.

CONVEYANCE OF FREEHOLDS SUBJECT TO PERPETUAL RENT.

CONVEYANCE *of* FREEHOLDS *which are* SUBJECT *to a perpetual Yearly* RENT-CHARGE.

Parties.

THIS INDENTURE, made, &c., BETWEEN A. B. of, &c. (*vendor*), of the one part, and C. D. of, &c. (*purchaser*), of the other part:

Recite grant of land to the vendor in fee subject to a perpetual rent-charge.

WHEREAS by an indenture, dated, &c., and made between G. H. of, &c., of the one part, and the said A. B. of the other part, for the considerations therein mentioned, the plot of ground hereinafter described and intended to be hereby conveyed, was conveyed by the said G. H. unto the said A. B. in fee simple; To the use that the said G. H. should have in fee simple the yearly rent-charge of £—— issuing out of the said hereditaments and premises to be paid as therein mentioned, and subject to the said rent-charge, to the use of the said A. B., in fee simple; and the indenture now in recital contains a covenant by the said A. B. for the payment of the said yearly rent-charge and certain other covenants by him as to buildings and otherwise:

That vendor has erected a dwelling-house on the land conveyed to him.

AND WHEREAS since the date and execution of the said recited indenture, the said A. B., in performance of a covenant in this behalf contained in the said indenture, hath erected a messuage or dwelling-house upon the said plot of ground intended to be hereby assured:

Agreement for sale of hereditaments subject to the yearly rent-charge.

AND WHEREAS the said A. B. hath agreed to sell to the said C. D. the plot of ground, messuage or dwelling-house, and hereditaments hereinafter described (subject as hereinafter mentioned), at the price of £——: NOW THIS INDENTURE WITNESSETH, that in consideration of the sum of £—— to the said A. B. paid by the said C. D., on or before the execution of these presents (the receipt whereof the said A. B. hereby acknowledges),

Vendor conveys land and dwelling-house to purchaser in fee, subject to perpetual rent-charge.

the said A. B., as beneficial owner, hereby conveys unto the said C. D., ALL THAT plot of ground, (*parcels*,) and all that messuage or dwelling-house which has been erected on the said plot of ground as aforesaid: To HOLD the same (subject to the said yearly rent-charge of £—— limited to the said G. H. by the hereinbefore recited indenture and to the covenants of the said A. B. contained in the same

indenture, and to all powers and remedies for enforcing payment of the said rent-charge and the observance and performance of the said covenants), unto and to the use of the said C. D., in fee simple: And the said C. D. hereby covenants with the said A. B., that the said C. D., his heirs or assigns, will at all times pay the said rent-charge and observe and perform the said covenants and keep indemnified the said A. B., and his estate and effects, from all claims and demands on account thereof.

Conveyance of freeholds subject to perpetual rent.

Covenant by purchaser to pay rent-charge and observe grantor's covenants

In witness, &c.

No. XCIX.

Conveyance *of a* Perpetual *yearly* Rent *issuing out of* Freeholds.

Conveyance of a fee-farm rent.

THIS INDENTURE, made the —— day of ——, Between A. B. of, &c. (*vendor*), of the one part, and C. D. of, &c. (*purchaser*), of the other part (*recite indenture by which certain hereditaments were assured unto G. H. and his heirs, to the use that A. B., his heirs and assigns, should receive thereout a yearly rent of £5, and subject thereto, and to the powers and remedies thereby limited for securing the payment thereof, to the use of G. H., his heirs and assigns, and that the said indenture contained a covenant by G. H. for payment of the rent-charge and other covenants by him as to buildings and otherwise, suprà*, pp. 346, 347, 348): And whereas the said A. B. hath agreed to sell to the said C. D. the said yearly rent-charge of £5, and the benefit of all powers and remedies vested in the said A. B. for securing payment thereof, at the price of £——: NOW THIS INDENTURE WITNESSETH, that in consideration of the sum of £—— to the said A. B. paid by the said C. D. on or before the execution of these presents (*the receipt, &c.*), the said A. B., as beneficial owner, hereby conveys unto the said C. D. The said yearly rent-charge of £5 limited to the said A. B. in fee simple by the hereinbefore recited indenture,

Parties.

Agreement for sale.

Conveyance

CONVEYANCE OF A FEE-FARM RENT.

by vendor of perpetual rent,

and all powers, remedies, and means whatsoever vested in the said A. B. by virtue of the said indenture or otherwise for enforcing and obtaining payment thereof (including the benefit of the covenants to repair and insure against fire and the proviso for re-entry contained in the said indenture if and so far as the said A. B. can convey the same) (*a*): To HOLD the same unto and to the use of the said C. D. in fee simple.

to purchaser in fee.

IN WITNESS, &c.

No. C.

CONVEYANCE IN CONSIDERATION OF FEE-FARM RENT BY MORTGAGEE AND MORTGAGOR.

CONVEYANCE *of Land by* MORTGAGEE *and* MORTGAGOR *in consideration of perpetual* RENT-CHARGE, *which is* LIMITED *to the* MORTGAGEE.

Parties.

THIS INDENTURE, made, &c., BETWEEN A. B. of, &c. (*mortgagee*), mortgagee in fee of the hereditaments hereinafter described under an indenture dated the —— day of ——, of the first part, C. D. of, &c. (*mortgagor*), owner in fee of the said hereditaments subject to the said mortgage, of the second part, and E. F. of, &c. (*purchaser*), of the third part: WITNESSETH, that in consideration of the rent hereinafter limited, and of the covenants of the said E. F. hereinafter contained, the said A. B., as mortgagee, at the

Conveyance by mortgagee and mortgagor of parcels, to purchaser to use that mortgagee may receive rent-charge &c., and subject thereto to purchaser in fee.

request of the said C. D., hereby conveys, and the said C. D., as beneficial owner, hereby conveys and confirms unto the said E. F.: ALL, &c. (*parcels, &c.*): To HOLD the same unto the said E. F. in fee simple (*To the use that A. B. shall receive rent-charge, suprà*, p. 346), and subject as aforesaid to the use of the said E. F., in fee simple. (*Grantee's covenants as in Precedent No. XCIV., suprà*, pp. 347, 348, *except that they will be entered into with A. B. Power to A. B., his heirs or assigns, to re-enter, in case rent or grantee's covenants shall not be paid and observed, suprà*, p. 349.)

Declaration

AND IT IS HEREBY DECLARED, that the rent, powers, and benefits

(*a*) *Supra*, pp. 348, 349, notes (*d*), (*f*).

hereby limited and granted to the said A. B., as aforesaid, shall be subject to such and the like right or equity of redemption, powers, and provisions as the hereditaments hereby conveyed to the said E. F. as aforesaid were subject to, under, or by virtue of the said indenture of mortgage immediately before the execution of these presents.

IN WITNESS, &c.

CONVEYANCE IN CONSIDERATION OF FEE-FARM RENT BY MORTGAGEE AND MORTGAGOR.

that provisions in mortgage shall apply to rent.

No. CI.

CONVEYANCE *of* ONE *of several* DWELLING-HOUSES *subject to a* PROPORTIONATE PART *of a perpetual* RENT-CHARGE *reserved in respect of* ALL *the* HOUSES *by the* ORIGINAL GRANT.

CONVEYANCE SUBJECT TO PROPORTION OF RENT-CHARGE.

THIS INDENTURE, made the —— day of ——, BETWEEN A. B. of, &c. (*vendor*), of the one part, and C. D. of, &c. (*purchaser*), of the other part: (*Recite conveyance of land to A. B. in fee, subject to perpetual rent-charge of* £4, *payable to C. D. in fee*): AND WHEREAS pursuant to a covenant for that purpose contained in the hereinbefore recited indenture, the said A. B. hath erected and completed four dwelling-houses on the piece of land thereby conveyed, or on some part thereof: AND WHEREAS the said A. B. hath agreed to sell to the said C. D. the dwelling-house and hereditaments hereinafter described (being one of the four dwelling-houses so built and completed as aforesaid), free from all incumbrances, except the payment of the yearly sum of £1, part of the said yearly rent-charge of £4 reserved by the hereinbefore recited indenture, at the price of £100: AND WHEREAS the said A. B. and C. D. have agreed to enter into the mutual covenants hereinafter contained relative to the payment of their respective proportions of the said rent-charge of £4: NOW THIS INDENTURE WITNESSETH, that in consideration of the sum of £100 to the said A. B., paid by the said C. D. on or before the execution of these presents (*the receipt, &c.*), the said A. B., as beneficial owner, hereby conveys unto the said C. D., ALL THAT messuage or dwelling-house

Parties.

Recite original conveyance reserving perpetual rent.

That grantee has erected four houses.

Agreement for sale of one of such houses, subject to proportion of rent-charge.

Witnessing part.

CONVEYANCE SUBJECT TO PROPORTION OF RENT-CHARGE.

situate and being, &c., and the buildings and garden adjoining or belonging to the said messuage or dwelling-house, including the use, in common with the other persons or person who may be entitled to the same, of the pump situate, &c., and of the drains appertaining to or connected with the said messuage or dwelling-house, and also including all other liberties granted by the said recited indenture of the —— day of ——, so far as the same do or can in any respect relate to the hereditaments hereby conveyed: To HOLD the same unto and to the use of the said C. D., in fee simple, subject to the payment of the yearly sum of £1 (part of the said yearly rent-charge of £4), and to the observance and performance of the covenants and conditions contained in the said recited indenture so far as the same relate to the said yearly sum of £1, and to the said premises hereby conveyed (*Acknowledgment by A. B. of right of C. D. to production of recited indenture, and undertaking for its safe custody*): AND THE said A. B. hereby covenants with the said C. D. that the said yearly rent-charge of £4 has been duly paid and satisfied up to the —— day of ——, now last past, and that the covenants and conditions contained in the said recited indenture, and on the part of the grantee, his heirs or assigns, to be observed and performed, have been duly performed up to the date of these presents: AND THAT the said A. B., his heirs or assigns, will at all times hereafter pay the said yearly rent-charge of £4, reserved by the said recited indenture (except the said yearly sum of £1, being the part of the said yearly rent-charge which is made payable by these presents in respect of the hereditaments hereby conveyed), and also will at all times observe and perform all the covenants and conditions in the said recited indenture contained and on the part of the said A. B., his heirs or assigns, to be observed and performed, so far as the same relate to such part of the premises comprised in the said recited indenture as are not hereby conveyed, and will at all times keep indemnified the said C. D., his heirs and assigns, from and against the payment of the said yearly rent-charge of £4 (except such part thereof as aforesaid), and the said covenants and conditions, so far as the same relate to such part of the said premises comprised in the said recited indenture as aforesaid as are not hereby conveyed, and also from and

Vendor conveys parcels

to purchaser in fee, subject to proportionate part of rent-charge, and to covenants in original grant applicable to house purchased.

Covenants by vendor that rent and covenants have been paid and performed,

to pay his proportion of rent,

and observe covenants applicable to houses not sold,

and to indemnify purchaser therefrom.

against all claims and demands whatsoever, by reason of the non-payment of the said yearly rent-charge (except as aforesaid), or the non-observance or non-performance of such covenants and conditions, or any of them: AND FURTHER, that in case the hereditaments and premises hereby conveyed, or any part thereof, shall at any time or times hereafter be distrained upon, or in case any other proceedings shall at any time or times hereafter be taken against or with reference to the same hereditaments and premises, or any part thereof, or against the said C. D., his heirs or assigns, for the payment of the said yearly rent-charge of £4 (except such proportion thereof as is made payable by these presents in respect of the hereditaments hereby conveyed as aforesaid), or any part thereof, or any sum or sums of money on account thereof, or on account of the covenants and conditions hereinbefore covenanted to be observed and performed by the said A. B., his heirs or assigns, or any of them, or the non-observance thereof, or if the said C. D., his heirs or assigns, shall at any time or times, hereafter pay the said yearly rent-charge of £4 (except such part thereof as aforesaid), or any part thereof, or any sum or sums of money on account thereof, or on account of the last-mentioned covenants and conditions, or any of them, or if he or they shall at any time or times hereafter be put to, bear, or sustain, any costs, loss, or damage, on account of the non-observance of such covenants and conditions, or any of them, then and in every such case it shall be lawful for the said C. D., his heirs or assigns, into and upon all or any part of such portion of the premises comprised in the said recited indenture as is not hereby conveyed, to enter and distrain for all such moneys, costs, loss, or damage, as the said C. D., his heirs or assigns, or the hereditaments and premises hereby conveyed, shall so pay, bear, or sustain, by reason of any such distresses, proceedings, costs, loss, or damage, and to dispose of the distresses then and there found according to law, as landlords may for rent reserved upon leases for years, to the intent that thereby the said C. D., his heirs or assigns, may be fully paid and satisfied all such moneys, costs, damages, and expenses, as aforesaid: AND THAT IN CASE and so often as aforesaid, it shall be lawful for the said C. D., his heirs or assigns, to enter into and upon and to hold all or any part of such portion of the premises comprised in the said recited indenture as is not hereby conveyed, and to receive the rents and

CONVEYANCE SUBJECT TO PROPORTION OF RENT-CHARGE.

Power to purchaser to distrain for rent payable in respect of houses not sold.

CONVEYANCE SUBJECT TO PROPORTION OF RENT-CHARGE.

profits thereof until he or they shall be fully paid all such moneys, costs, damages, and expenses as aforesaid: AND THE SAID C. D. hereby covenants with the said A. B., THAT the said C. D., his heirs or assigns, will at all times hereafter pay the said yearly sum of £1 (being the proportion of the aforesaid rent-charge hereby made payable in respect of the hereditaments hereby conveyed), and will at all times observe and perform all and singular the covenants and conditions in the said recited indenture contained, which henceforth, on the part of the said C. D., his heirs or assigns, ought to be observed and performed in respect of the premises hereby conveyed, and will at all times hereafter keep indemnified the said A. B., his heirs and assigns, from and against the payment of the said yearly sum of £1, and the said covenants and conditions relating to such portion of the said premises as is hereby conveyed, and from and against all claims and demands whatsoever by reason of the non-payment of the said yearly sum of £1, or the non-observance or non-performance of the last-mentioned covenants and conditions, or any of them: AND FURTHER, that in case any part of the hereditaments and premises comprised in the said recited indenture, and not hereby conveyed, shall at any time or times hereafter be distrained upon, or in case any other proceedings shall at any time or times hereafter be taken against or with reference to the same hereditaments and premises, or any part thereof, or against the said A. B., his heirs or assigns, for the payment of the said yearly sum of £1, or any part thereof, or any sum or sums of money on account thereof, or on account of the covenants and conditions hereinbefore covenanted to be observed and performed by the said C. D., his heirs or assigns, or the non-observance thereof, or if the said A. B., his heirs or assigns, shall at any time or times hereafter pay the said yearly sum of £1, or any part thereof, or any sum or sums of money on account thereof, or on account of the last-mentioned covenants and conditions, or any of them, or if he or they shall at any time or times hereafter be put to, bear, or sustain any costs, loss, or damage on account of the non-observance of such last-mentioned covenants and conditions, or any of them, then and in every such case it shall be lawful for the said A. B., his heirs or assigns, into and upon all or any part of the premises hereby conveyed, to enter and distrain for all such moneys, costs, loss, or

Covenants by purchaser, to pay his proportion of rent and observe covenants applicable to purchased property, and to indemnify vendor therefrom.

Power to vendor to distrain for rent payable in respect of purchased property.

damage, and to dispose of the distresses then and there found according to law, as landlords may for rent reserved upon leases for years, to the intent that thereby the said A. B., his heirs or assigns, may be fully paid and satisfied all such moneys, costs, damages, and expenses as aforesaid: AND THAT IN CASE and so often as aforesaid it shall be lawful for the said A. B., his heirs or assigns, to enter into and upon, and to hold all or any part of the premises hereby conveyed, and to receive the rents and profits thereof until he or they shall be fully paid all such moneys, costs, damages, and expenses as aforesaid.

CONVEYANCE SUBJECT TO PROPORTION OF RENT-CHARGE.

IN WITNESS, &c.

No. CII.

DEED *containing* MUTUAL COVENANTS *and* MUTUAL POWERS *of* DISTRESS *and* ENTRY *by several* PURCHASERS *for* INDEMNIFYING *each of them against the* PAYMENT *of more than his* PROPORTIONATE PART *of a* YEARLY RENT *which is* CHARGED *on* ALL *the* LANDS.

MUTUAL COVENANTS AND POWERS TO SECURE PAYMENT OF PROPORTIONATE PART OF RENT-CHARGE.

THIS INDENTURE, made, &c., BETWEEN A. B., of, &c. (*one of the four purchasers*), of the first part, C. D., of, &c. (*another of the four purchasers*), of the second part, E. F., of, &c. (*another of the four purchasers*), of the third part, and G. H., of, &c. (*the other of the four purchasers*), of the fourth part: (*Recite indenture whereby a piece of land situate, &c., and therein particularly described, was granted by L. M. to N. O., his heirs and assigns, reserving a yearly rent charge of £5 to L. M., his heirs and assigns, and subject to the covenant that N. O. should build four messuages or dwelling-houses on the said piece of land within a given time and according to a plan, &c.*): AND WHEREAS, pursuant to the covenant in that behalf contained in the said recited indenture as aforesaid, the said N. O. erected four messuages or dwelling-houses on the said piece of land comprised in the said indenture: AND WHEREAS the said N. O. has lately sold and conveyed the said several messuages and premises to the several persons parties hereto at and under apportioned parts of the said

Parties.

That four houses have been built on the land pursuant to covenant

Sale of the messuages at apportioned parts of the rent and covenants.

MUTUAL COVENANTS AND POWERS TO SECURE PAYMENT OF PROPORTIONATE PART OF RENT-CHARGE.

yearly rent of £5, and subject to the covenants and conditions contained in the said recited indenture, and on the grantee's part to be observed and performed so far as the same relate to the said premises respectively: AND WHEREAS the short particulars of the several premises so respectively sold and conveyed to the several persons parties hereto as aforesaid, the dates of their respective conveyances and the amount of the apportioned yearly rents reserved thereby respectively are respectively set forth opposite to the names of the several persons parties hereto in the schedule hereunder written: AND WHEREAS upon the treaty for the aforesaid sales it was agreed that the several persons parties hereto should enter into such mutual covenants and grant such mutual powers of distress and entry as are hereinafter contained: NOW THIS INDENTURE WITNESSETH, that in pursuance of the aforesaid agreement, and in consideration of the premises, each of them the said several persons parties hereto hereby covenants with the others of them in manner following, that is to say, THAT each of the several persons parties hereto, his heirs and assigns, shall henceforth for and in respect of the premises conveyed to him as aforesaid, pay the apportioned yearly rent set opposite to his name in the fourth column of the schedule hereunder written, and duly observe and perform the covenants contained in the said recited indenture of the —— day of —— and on the grantee's part to be observed and performed so far as the same relate to the last-mentioned premises, and shall at all times hereafter keep indemnified the other parties hereto, and their respective heirs and assigns, and every of them, from and against all actions, proceedings, claims, and demands whatsoever, for or by reason or on account of the non-payment of the said apportioned rent, or any part thereof, or any breach of the said covenants so far as the same relate to the last-mentioned premises: AND FURTHER, that if any of the parties hereto, his heirs or assigns, shall at any time or times hereafter be required to pay more than his or their due proportion of the said yearly rent of £5, and shall pay the same accordingly, or shall sustain or incur any costs, charges, damages, or expenses whatsoever, for or by reason or on account of any default by any other of the parties hereto, his heirs or assigns, in the payment of the rent or in the observance or performance of the covenants which he

Particulars of premises, dates of conveyances, and amount of apportioned rents contained in schedule.

On the treaty for sale, agreement that purchasers should enter into mutual covenants and grant mutual powers of distress and entry.

Each of the purchasers covenants with the others that he will pay apportioned rent set opposite his name in schedule, and observe covenants that relate to premises conveyed to him, and that he will indemnify the others against such apportioned rent and covenants, and that the other parties shall be at liberty to enter and distrain on premises conveyed to him in respect of any loss arising from default by him.

or they ought to pay, observe, or perform under the covenants hereinbefore contained, then and so often as the same shall happen, it shall be lawful for the person or persons making such payment or sustaining or incurring such costs, charges, damages, or expenses as aforesaid, into and upon all or any part of the premises mentioned in the schedule hereto set opposite to the name of the person who or whose heirs or assigns shall have made such default as aforesaid, to enter and distrain for such excess of rent, costs, charges, damages, or expenses as aforesaid, and to dispose of the distress or distresses then and there found according to law as landlords may upon rents reserved upon leases for years, to the intent that he and they may be thereby fully repaid and satisfied all such excess of rent, costs, charges, damages, and expenses aforesaid, and also (if he or they shall think fit so to do) to enter into or upon all or any part of the last-mentioned premises, and to remain in possession thereof, and receive the rents and profits thereof until he or they shall be fully repaid and satisfied all such excess of rent, costs, charges, damages, and expenses as aforesaid.

MUTUAL COVENANTS AND POWERS TO SECURE PAYMENT OF PROPORTIONATE PART OF RENT-CHARGE.

In witness, &c.

The Schedule above referred to.

No. CIII.

Conveyance *of* Freehold Land, *reserving the* Minerals *to the* Vendor, *with* Powers *for working the same* (*a*).

CONVEYANCE OF FREEHOLDS, RESERVING MINERALS.

THIS INDENTURE, made the —— day of ——, Between A. B., of, &c. (*vendor*), of the one part, and C. D., of, &c. (*pur-*

Parties.

(*a*) An exception of the mines under land is *primâ facie* an exception of the strata in which the minerals are, and leaves the grantor in the ownership of such strata as a separate tenement and not as a mere servitude or easement. He may therefore use them for any purpose he thinks fit, *e.g.*, he may make a road through them for the conveyance of the produce of adjoining mines. (Duke of Hamilton *v.* Graham, L. R. 2 H. L. 166.) But it

Exception of mines.

CONVEYANCE OF FREEHOLDS, RESERVING MINERALS.

chaser), of the other part: WHEREAS the said A. B. hath agreed to sell to the said C. D. the lands and hereditaments hereinafter described, with such exceptions and reservations as are hereinafter expressed, at the price of £——: NOW THIS INDENTURE WITNESSETH, that in consideration, &c. (*the receipt, &c.*), the said A. B., as beneficial owner, hereby conveys unto the said C. D. ALL, &c. (*parcels*) (except and reserved as hereinafter is mentioned) TO HOLD the same unto and to the use of the said C. D., in fee simple: AND IT IS DECLARED that there shall be excepted and reserved unto the said A. B., in fee simple, out of the conveyance hereby made, all mines, veins, seams, and beds of coal, ironstone, and other minerals whatsoever already found or which may hereafter be found under the lands hereby conveyed, with full liberty of ingress, egress, and regress at all times for the said A. B., his heirs or assigns, and his or their servants, agents, and workmen, into and upon the said lands, and either with or without horses and other cattle, carts and waggons and other carriages, for the purpose of searching for, working, getting, and carrying away the said mines and minerals, and with full liberty also for the said A. B., his

Agreement for sale of land,

reserving minerals.

Witnessing part.

Vendor conveys parcels.

Exception and reservation of mines and minerals,

and liberty of ingress, &c.

and liberty to sink pits

is a question of construction whether the strata or the minerals only are reserved, and in the latter case the grantor has the right of getting the minerals only. (Ramsay *v.* Blair, L. R. 1 App. Ca. 701.)

Right of owner of surface to support from the subjacent mines.

Where the ownership of the mines is separate from that of the surface, *primâ facie* the mine owner is bound to leave sufficient support for the surface, and a grant or reservation of express power to work and get the minerals, and for that purpose to sink shafts, &c., making compensation for damage to the surface, does not of itself relieve the mine owner from the obligation to support the surface; because sufficient effect may be given to the compensation clause by holding it to apply to damage caused by the sinking of the shafts, and other surface works authorized by the deed. (Humphries *v.* Brogden, 12 Q. B. 739; 20 L. J. Q. B. 10; Harris *v.* Ryding, 5 M. & W. 60; 8 L. J. (N. S.) Exch. 181; Smart *v.* Morton, 24 L. J. Q. B. 260; Roberts *v.* Haines, 25 L. J. Q. B. 353; Hext *v.* Gill, L. R. 7 Ch. 699.) But if it appears clearly on the face of the instrument that the grant of the mines is intended to carry with it the right so to work them as to cause a subsidence, there is nothing illegal in such a grant, and it is in every case a question of construction whether this is or is not the intention of the deed. (Rowbotham *v.* Wilson, 27 L. J. Q. B. 61; 8 H. L. C. 348; Duke of Buccleuch *v.* Wakefield, L. R. 4 H. L. 377.) Thus, in a case where, on a grant of land for the erection of a cotton mill, there was an exception and reservation of all the mines and minerals, with power to take the same at pleasure, but without entering upon the surface, so that compensation be made for all damage to the buildings by the exercise of any of the excepted powers, it was held that the mine owner might work so as to injure the buildings, because as he was restrained from entering on the surface, the damage contemplated by the compensation-clause must be damage by subsidence. (Aspden *v.* Siddon, L. R. 10 Ch. 394.)

heirs or assigns, to sink, drive, make, and use pits, shafts, drifts, adits, aircourses, and watercourses, and to erect and set up fire and other engines, machinery, and works, and to lay down rail-roads and other roads in, upon, under, and over the said lands, or any of them, for the purpose of more conveniently working and carrying away the said mines and minerals, and also to appropriate and use any part of the surface of the said lands for depositing, placing, and heaping thereon the minerals, waste, rubbish, and other substances which may be gotten from the said mines, and generally to do all other acts and things necessary or proper for working and getting the said mines and minerals according to the most approved practice of mining in the district: PROVIDED ALWAYS, that the said A. B., his heirs or assigns, shall pay to the said C. D., his heirs or assigns, the annual sum of £—— for every acre, and so in proportion for any less quantity than an acre of land, the surface whereof shall be appropriated or used for any of the purposes aforesaid, so long as such appropriation or use shall continue, and until the surface shall be restored, as nearly as may be practicable, to its original state and condition before such appropriation or use commenced: PROVIDED ALSO that the workings of the said mines shall be conducted in such a manner as not to endanger any buildings now being on the said lands, or which may be hereafter erected on the site of or within —— yards of the site of any present buildings, and generally to do as little damage or injury to the surface of the said lands as shall be consistent with the proper working of the said mines: PROVIDED ALSO, that the said A. B., his heirs or assigns, shall pay to the said C. D., his heirs or assigns, adequate compensation for all damage or injury which he or they, or his or their tenants, may sustain by reason of the working of the said mines, or the exercise of any of the liberties or privileges hereby excepted and reserved, the amount of such compensation, and all other matters in difference which may arise between the parties in connection with the said excepted mines, minerals, liberties, and privileges, to be settled by two arbitrators, one to be appointed by each party in difference, or their umpire, subject to the provisions as to arbitration contained in the "Common Law Procedure Act, 1854."

CONVEYANCE OF FREEHOLDS, RESERVING MINERALS.

and to appropriate surface for heap room.

Vendor to pay rent for surface appropriated,

and workings to be conducted so as not to endanger buildings, &c.

Vendor to pay compensation for damage.

IN WITNESS, &c.

No. CIV.

CONVEYANCE OF MINES WITHOUT SURFACE.

CONVEYANCE *of* MINES *without the* SURFACE, *the* MINES *to be* WORKED *through the* ADJOINING PROPERTY.

Parties. THIS INDENTURE, made the —— day of ——, BETWEEN A. B., of, &c. (*vendor*), of the one part, and C. D., of, &c. (*purchaser*), of the other part: WHEREAS the said A. B. hath agreed to sell to the said C. D. the mines and minerals hereinafter described at the price of £——: NOW THIS INDENTURE WITNESSETH, that in consideration, &c. (*the receipt, &c.*), the said A. B., as beneficial owner, hereby conveys unto the said C. D., ALL the mines and minerals whatsoever in or under the pieces of land situate in the parish of ——, in the county of ——, which are specified in the schedule hereunder written, and are delineated and coloured pink in the map hereunto annexed, but so that the said mines and minerals shall and may be worked, gotten, and carried away by means of outstroke or underground workings, through any adjoining mines or lands belonging to or held by the said C. D., his heirs or assigns, or which he or they may for the time being be authorized to use for that purpose, and that the surface of the said land specified in the schedule hereunder written, or any of them, shall not be entered upon or in any manner interfered with for any of the purposes aforesaid, or for any purpose connected with the said mines and minerals, and so also that the said C. D., his heirs or assigns, shall do no damage or injury to the surface of the said lands in or about the working and getting of the said mines and minerals, or in anywise relating thereto: To HOLD the said mines and premises hereby conveyed, unto and to the use of the said C. D., in fee simple.

Agreement for sale.

Witnessing part.

Vendor conveys mines and minerals,

to be worked by underground workings only,

surface not to be entered on or interfered with, and purchaser to pay compensation for damage.

Habendum to purchaser in fee.

IN WITNESS, &c.

THE SCHEDULE ABOVE REFERRED TO.

No. CV.

CONVEYANCE *to a* SUB-PURCHASER, *who pays a* HIGHER PRICE *than the* ORIGINAL PURCHASER (*a*). CONVEYANCE TO SUB-PURCHASER AT HIGHER PRICE.

THIS INDENTURE, made the —— day of ——, BETWEEN A. B., of, &c. (*vendor*), of the first part, C. D., of, &c. (*original purchaser*), of the second part, and E. F., of, &c. (*sub-purchaser*), of the third part: WHEREAS the said A. B. lately agreed, &c. (*agreement for sale by A. B. to C. D. for* £1000): AND WHEREAS the said C. D. has since agreed with the said E. F. to sell to him the same hereditaments at the price of £1050: NOW THIS INDENTURE WITNESSETH, that in consideration of the sum of £1000 to the said A. B. and the sum of £50 to the said C. D. paid by the said E. F. on or before the execution of these presents (the receipt whereof respectively the said A. B. and C. D. hereby acknowledge), THE SAID A. B., as beneficial owner, at the request of the said C. D. hereby conveys, and the said C. D. hereby confirms unto the said E. F., &c. (*Conveyance of freeholds to E. F. in fee simple*, p. 225.)

Parties.

Original agreement for sale.

Agreement between purchaser and sub-purchaser.

Witnessing part.

Considerations.

Conveyance by vendor and original purchaser.

IN WITNESS, &c.

No. CVI.

CONVEYANCE *to a* SUB-PURCHASER *who pays a* LESS SUM *than the* ORIGINAL PURCHASER (*b*). CONVEYANCE TO SUB-PURCHASER AT LESS SUM.

THIS INDENTURE, &c. (*date, parties, and recitals, the same as in the last Precedent, substituting* £950 *for* £1050): NOW THIS INDENTURE WITNESSETH that in consideration of the sum of £950 by the said E. F. and the sum of £50 by the said C. D. paid to the said A. B. on or before the execution of these presents (the receipt whereof the said A. B. hereby acknowledges), the said A. B., &c. (*conveyance by A. B. and confirmation by C. D. as in last Precedent*).

Considerations.

Conveyance.

IN WITNESS, &c.

(*a*) The stamp will be an *ad valorem* on the £1050. See 33 & 34 Vict. c. 97, sec. 74 (3).

(*b*) The stamp will be an *ad valorem* on the £950. See 33 & 34 Vict. c. 97. sec. 74 (3).

No. CVII.

CONVEYANCE UNDER DECREE OR ORDER IN ADMINISTRATION SUIT.

CONVEYANCE *by* TRUSTEES *and* EXECUTORS *of* FREEHOLD PROPERTY *under a* DECREE *or* ORDER *in an* ADMINISTRATION SUIT (*a*).

Parties.

THIS INDENTURE, made the —— day of ——, BETWEEN A. B., of, &c., and C. D., of, &c. (*vendors*), of the one part, and E. F., of, &c. (*purchaser*), of the other part: WHEREAS X. Y., late of, &c., being seised in fee simple of the hereditaments intended to be hereby conveyed, duly made his will, dated, &c., and thereby devised all his lands, tenements, and hereditaments, and other real estate, unto and to the use of the said A. B. and C. D., their heirs and assigns, upon the trusts therein declared concerning the same, and the said testator appointed the said A. B. and C. D. the executors of his said will: AND WHEREAS the said testator died on the —— day of —— without having altered or revoked his said will, and the same was shortly afterwards duly proved by the said executors thereof in the principal Probate registry of the High Court of Justice: AND WHEREAS by a decree of the High Court of Justice (Chancery Division), dated the —— day of ——, and made in an action wherein M. N. claiming to be a creditor of the said X. Y., deceased, was plaintiff, and the said A. B. and C. D. were defendants, it was (amongst other things) ordered that the real estate of the said testator be sold: AND WHEREAS in pursuance of the said decree the real estate of the said testator was, on the —— day of —— last, with the approbation of the judge to whose court the said cause was attached, put up for sale by public auction in several lots, and the hereditaments intended to be hereby assured constituted Lot 2 at the said sale: AND WHEREAS by the conditions of the said sale it was provided that

Will of X. Y., devising all his real estate to trustees.

Order of Court for sale.

That property was put up for sale.

(*a*) On a sale under a decree of the Court, all persons having a *legal* interest in the property, whether parties to the suit or not, should concur in the conveyance, but the purchaser is not entitled to the concurrence of any persons being parties to the suit, or otherwise bound by the proceedings therein, whose interests are merely equitable. (Dart, V. & P. 770; Keatinge *v.* Keatinge, 6 Ir. Eq. 43; Cole *v.* Sewell, 17 Sim. 40; *Re* William's Estate, 5 De G. & Sm. 515.)

CONVEYANCE UNDER DECREE OR ORDER IN ADMINISTRATION SUIT.

each purchaser should at the time of the sale pay a deposit of £5 per cent. on the amount of his purchase-money to O. P., the person appointed by the said judge to receive the same: And it was also provided that each purchaser was, in addition to the amount of his bidding at the sale, to pay the value of all timber and timber-like trees, tellers, and pollards (if any), on the lot purchased by him, down to 1*s.* per stick inclusive, the amount thereof to be ascertained by valuation as therein mentioned: and also that each purchaser was, under an order for that purpose to be obtained by him, to pay the amount of his purchase-money after deducting the amount paid as a deposit, together with the amount of the aforesaid valuation, into the Bank of England, with the privity of the Paymaster General (*b*), to the credit of the said cause, on or before the —— day of —— then next, and if the same should not be so paid, then the purchaser was to pay interest on his purchase-money, including the amount of such valuation, at the rate of £5 per cent. per annum, from the said —— day of —— next to the day on which the same should be actually paid: And whereas at the said sale the said E. F. was the highest bidder for and was declared the purchaser of the said Lot 2 at the sum of £2000, and he thereupon paid to the said O. P. the sum of £100 as a deposit, pursuant to the said condition in that behalf, which deposit has been since paid by the said O. P. into the Bank of England with the privity of the Paymaster General to the credit of the said cause: And whereas the chief clerk of the said judge certified the result of the said sale by his certificate, dated the —— day of ——, and the said certificate was approved and signed by the said judge on the —— day of ——, and has been since duly filed in the said court: And whereas the timber, timber-like trees, tellers, and pollards on the said lot have been valued pursuant to the said condition in that behalf at the sum of £150: And whereas, by an order of the said court, dated the —— day of ——, and made in the said cause, it was ordered that the said E. F. should, on or before the —— day of ——, pay the sum of £1900 (being the balance of the said purchase-money of £2000 after deducting the said deposit), and the said sum of £150, being the amount of the said valuation, together with interest after the rate of £5 per cent.

That purchaser was declared the highest bidder, and paid deposit.

Chief clerk's certificate of result of sale.

Valuation of timber.

Order for payment of purchase-money into Court.

(*b*) See note, *supra*, p. 341.

CONVEYANCE UNDER DECREE OR ORDER IN ADMINISTRATION SUIT.

per annum on the said sums from the said —— day of ——, the day appointed in the said conditions for the completion of the purchase, to the day on which the same should be actually paid (the amount of such interest to be certified by the chief clerk) into the Bank of England, with the privity of the Paymaster-General to the credit of the said cause, to an account to be entitled "The proceeds of the sale of the real estates of X. Y., deceased," and that all proper parties should join in the sale and conveyance of the said hereditaments to the said E. F.: AND WHEREAS, in pursuance of the said last recited order, the said E. F. did, on the —— day of ——, pay the said sums of £1900 and £150, and also the sum of £10, the amount certified to be due for interest thereon from the said —— day of —— last up to the said day of payment (making together the sum of £2060), into the Bank of England, with the privity of the Paymaster General to the credit of the said cause, to an account entitled "The account of the proceeds of the sale of the real estates of X. Y., deceased," as appears by the receipt of one of the cashiers of the said bank and the certificate of the Paymaster-General, dated respectively the —— and —— days of ——: NOW THIS INDENTURE WITNESSETH, that in pursuance of the said order, and for the purpose of carrying into effect the said sale, and in consideration of the said sums of £100 and £2060, paid by the said E. F. as hereinbefore is mentioned, the said A. B. and C. D., as trustees, hereby convey, &c. (*Conveyance to E. F. in fee simple, suprà*, p. 225.)

Payment of purchase-money into Court.

Witnessing part.

Consideration.

Trustees convey parcels to purchaser in fee.

IN WITNESS, &c.

No. CVIII.

CONVEYANCE *on a* SALE *made under* THE SETTLED ESTATES ACT, 1877 (40 & 41 *Vict. c.* 18) (*a*).

CONVEYANCE ON SALE UNDER SETTLED ESTATES ACT.

THIS INDENTURE, made the —— day of ——, BETWEEN A. B. of, &c. (*tenant for life under will*), of the one part, and

Parties.

(*a*) This Act declares that the word "settlement" as used therein shall signify any Act of Parliament, deed, agreement, copy of court roll, will, or other instrument, or any number of such instruments, under or by virtue of which any hereditaments of any tenure or any estates or interests in any such hereditaments stand limited to or in trust for any persons by way of succession, including any such instruments, affecting the estates of any one or more of such persons exclusively. The Act then declares that the term "settled estates" as used therein shall signify any hereditaments of any tenure, and all estates or interests in any such hereditaments, which are the subject of a settlement, and that for the purposes of the Act a tenant in tail after possibility of issue extinct shall be deemed a tenant for life; and that all estates or interests in remainder or reversion not disposed of by the settlement, and reverting to a settlor or descending to the heir of a testator, shall be deemed to be estates coming to such settlor or heir under or by virtue of the settlement; and that in determining what are settled estates within the meaning of the Act, the Court shall be governed by the state of facts, and by the trusts or limitations of the settlements at the time of the said settlement taking effect (s. 2).

Provisions of Settled Estates Act as to sales.

The 16th section enables the Court to authorize a sale of the whole or any parts of any settled estates or of any timber (not being ornamental timber) growing on any settled estates, such sale to be conducted and confirmed in the same manner as by the rules and practice of the Court for the time being, is or shall be required in the sale of lands sold under a decree of the Court. The 18th section empowers the Court, when any land is sold for building purposes, to allow the whole or any part of the consideration to be a rent issuing out of such land, which may be secured and settled in such manner as the Court approves. On any sale of land any earth, coal, stone, or mineral may be excepted, and any rights or privileges may be reserved, and the purchaser may be required to enter into any covenant or submit to any restrictions which the Court may deem advisable (s. 19). The 20th section makes it lawful for the Court to direct that any part of the settled estates be laid out for streets, roads, paths, squares, gardens, and other open spaces, sewers, drains or water courses. And the 22nd section provides that, on every sale or dedication under the Act, the Court may direct what person or persons shall execute the deed of conveyance, and that such conveyance shall take effect as a revocation or appointment of use or otherwise as the Court may direct.

Applications to the Court must be made with the concurrence or consent of the following parties, namely,—Where there is a tenant in tail under the settlement in existence and of full age, then the parties to concur or consent shall be such tenant in tail, or if there is more than one such tenant in tail, then the first of such tenants in tail and all persons in existence having any beneficial estate or interest under or by virtue of the settlement prior to the estate of such tenant in tail, and all trustees having any estate or interest on behalf of any unborn child prior to the estate of

CONVEYANCE ON SALE UNDER SETTLED ESTATES ACT.

C. D. of, &c. (*purchaser*), of the other part: WHEREAS X. Y., late of, &c., being seised in fee simple of the farms and lands intended to be hereby assured, duly made his will, dated, &c., and thereby devised all his messuages, lands, tenements, and hereditaments, being freehold of inheritance, to the uses following (that is to say), to the use of the said A. B. and his

Will of testator devising property to A. B. for life, with remainders over.

such tenant in tail; and in every other case the parties to concur or consent shall be all the persons in existence, having any beneficial estate or interest under or by virtue of the settlement, and also all trustees having any estate or interest on behalf of any unborn child; subject, however, to the proviso, that where an infant is tenant in tail under the settlement, it shall be lawful for the Court, if it shall think fit, to dispense with the concurrence or consent of the person if only one, or all or any of the persons, if more than one, entitled, whether beneficially or otherwise, to any estate or interest subsequent to the estate tail of such infant (ss. 24, 25).

The 26th section provides that where on an application under the Act, the concurrence or consent of any person as aforesaid shall not be obtained, a notice may be given to such person in such manner as the Court shall direct, requiring him to say whether he assents or dissents, and if he does not reply he will be deemed to have submitted his rights and interests to be dealt with by the Court; and the Court is authorized by ss. 27 & 28 to dispense with notice and consents in certain cases. The 29th section empowers the Court to give effect to any petition subject to and so as not to affect the rights, estate, or interest of any person whose concurrence or consent has been refused, or who has not submitted or is not deemed to have submitted his rights or interests to be dealt with by the Court, or whose rights, estate, or interest ought, in the opinion of the Court, to be excepted.

All money to be received on any sale effected under the authority of the Act, may, if the Court shall think fit, be paid to any trustees of whom it shall approve, or otherwise the same must be paid into Court, and in every case it must be applied as the Court shall from time to time direct to some one or more of the following purposes, namely,—The purchase or redemption of the land tax, the discharge or redemption of any incumbrance affecting the hereditaments in respect of which such money was paid, or affecting any other hereditaments subject to the same uses or trusts, the purchase of other hereditaments to be settled in the same manner as the hereditaments in respect of which the money was paid, or the payment to any person becoming absolutely entitled (sec. 34); and until the money can be applied as aforesaid, it must be invested as the Court may direct in some one of the investments, in which cash under the control of the Court is for the time being authorized to be invested (s. 36).

The powers conferred by the Act cannot be exercised, if an express declaration that they shall not be exercised is contained in the settlement (s. 38).

Where applications are made or consented to under the Act by a married woman, she must be first separately examined by the Court, or by some solicitor appointed by the Court for the purpose (ss. 50, 51, 52).

By the Conveyancing Act, 1881, sect. 41, it is provided that when a person in his own right seised or entitled to land for an estate in fee simple, or for any leasehold interest at a rent, is an infant, the land shall be deemed to be a settled estate within the Settled Estates Act, 1877; and by the Conveyancing Act, 1882, the 17th section of the Settled Estates Act, 1877, is repealed. See also sect. 70 of the Conveyancing Act, 1881.

assigns during his life, without impeachment of waste, with remainder to the use that E. B., the wife of the said A. B., should after the decease of the said A. B., receive the yearly rent-charge of £500, to be charged upon and issuing out of the said premises, with usual powers of distress and entry for recovering payment of the said rent-charge when in arrear, and subject thereto to the use of L. M. and N. O., their executors, administrators, and assigns, for the term of 1000 years computed from the day of the death of the said A. B., without impeachment of waste upon the usual trusts for securing the said yearly rent-charge, and for raising the sum of £10,000 for the portions of the younger children of the said A. B., with remainder to the use of the first and other sons of the said A. B. successively, according to seniority in tail male, with remainder to the use of the said A. B., his heirs and assigns, for ever (*Recite death of testator, and probate of his will*): And whereas the said A. B. has now living three children by the said E. B. his wife (that is to say), F. B. his eldest son, G. B. and H. B., all of whom are under the age of twenty-one years: And whereas by an order of the High Court of Justice (Chancery Division) dated the —— day of ——, and made in the matter of an Act made and passed in the 40th and 41st years of the reign of Her present Majesty, intituled "An Act to Consolidate and Amend the Law relating to Leases and Sales of Settled Estates," and in the matter of a farm and lands known as —— farm, situate in the parish of ——, in the county of ——, and containing —— or thereabouts (meaning the farm and lands intended to be hereby assured), and which order was made upon the petition of the said A. B. with the consent of the said E. B. (she having been first examined apart from her said husband touching her knowledge of the nature and effect of the said application, by J. a solicitor of the said court appointed for that purpose, and it appearing from the certificate of the said J. that he was satisfied that the said E. B. was aware of the nature and effect of the said application, and that she freely desired to consent to the same), and with the consent also of the said F. B., G. B., and H. B. given by K. their guardian on their behalf, pursuant to the direction of the said Court, and with the consent also of the said L. M. and N. O., on behalf of the unborn children of the said A. B., the said Court being of

CONVEYANCE ON SALE UNDER SETTLED ESTATES ACT.

That A. B. has three children, all infants.

Order of Court for sale under Settled Estates Act.

CONVEYANCE ON SALE UNDER SETTLED ESTATES ACT.

opinion that it was proper and consistent, with a due regard for the interests of all parties entitled under the said will of the said X. Y., that a sale should be authorized to be made of the farm and lands therein described (being the farm and lands intended to be hereby assured), did order that the said farm and lands be sold accordingly, with the approbation of the judge, subject to the provisions and restrictions in the said Act contained; and the said Court did further order that the money to arise by such sale be paid into the Bank of England, with the privity of the Paymaster-General, to the credit of *ex parte* A. B., in the matter of "An Act to Consolidate and Amend the Law relating to Leases and Sales of Settled Estates," "the proceeds of the sale of settled estates under the will of X. Y. deceased;" and the said Court did further order that the said A. B. should execute the deed or deeds of conveyance of the said farm and lands to the purchaser or purchasers thereof on such sale being effected; AND WHEREAS in pursuance of the said order the said farm and lands intended to be hereby assured were on the —— day of —— put up for sale by public auction in one lot, with the approbation of the judge to whose Court the said application was made, and the said C. D. was the highest bidder for, and was declared the purchaser of, the said farm and lands at the price of £——; AND WHEREAS the result of the said sale has been certified by the chief clerk of the said judge, by his certificate dated the —— day of ——, which certificate was approved by the said judge on the —— day of ——, and has been since filed in the said Court: AND WHEREAS the said C. D. did, on the —— day of —— last, pay the said purchase money of £—— into the Bank of England, with the privity of the Paymaster General, to the credit of *ex parte* A. B., in the matter of "An Act to Consolidate and Amend the Law relating to Leases and Sales of Settled Estates," "The proceeds of the sale of settled estates under the will of X. Y.," as appears by the receipt of one of the cashiers of the Bank of England, and the certificate of the Paymaster General, dated respectively the —— day of ——, and the —— day of ——: NOW THIS INDENTURE WITNESSETH, that, in pursuance of the said order in this behalf, and for the purpose of carrying into effect the said sale, and in consideration of the said sum of £——, paid by the said C. D., as hereinbefore is mentioned, the said A. B.,

Pursuant to order lands put up for sale.

Chief clerk's certificate.

Payment of purchase-money into Court.

Witnessing part.

Considera-tion.

and as beneficial owner so far only as regards his estate for life in the said hereditaments, in exercise of the power for this purpose conferred upon him by the said Act, and of all other powers (if any) him hereunto enabling, HEREBY REVOKES all the uses, trusts and provisions, by and in the said will of the said X. Y. declared and contained concerning the farm, lands and hereditaments hereinafter described, and HEREBY APPOINTS THAT ALL, &c. (*parcels*), shall, from and immediately after the execution of these presents, go, remain, and be to the use of the said C. D., in fee simple: AND THE SAID A. B. hereby acknowledges the right of the said C. D. to production of the documents of title mentioned in the schedule hereto, and to delivery of copies thereof, and hereby undertakes for the safe custody thereof.

CONVEYANCE ON SALE UNDER SETTLED ESTATES ACT.

Vendor revokes uses of will, and appoints parcels to purchaser in fee.

Acknowledgment and undertaking.

IN WITNESS, &c.

THE SCHEDULE ABOVE REFERRED TO.

No. CIX.

CONVEYANCE *on a* SALE *under the* PARTITION ACT, 1868, *where the* PROPERTY *has* DESCENDED *on* TWO CO-HEIRESSES, *of whom* ONE *is an* INFANT (*a*).

UNDER PARTITION ACT.

THIS INDENTURE, made the —— day of ——, BETWEEN A. B. of, &c. (*one co-heiress*), of the first part, C. D. of, &c. the person appointed, as hereinafter appears, to convey in the place of E. F., an infant (*other co-heiress*), of the second part, and

Parties.

(*a*) By the Partition Act, 1868 (31 & 32 Vict. c. 40), it is provided that in suits for partition, where a decree for partition might have been made, if from the nature of the property or the number of the parties interested therein, or the absence or disability of some of those parties, or any other circumstance, a sale of the property is considered by the Court to be more beneficial than a division, the Court of Chancery may, on the request of any of the parties, direct a sale (sec. 3); *or* if the party or parties interested,

Provisions of Partition Act.

UNDER PARTITION ACT.

Recite death of father of co-heiresses intestate.

Decree of Court ordering sale.

G. H. of, &c. (*purchaser*), of the third part: WHEREAS X. Y., late of, &c., died on the —— day of ——, 18—, intestate, leaving the said A. B. and E. F., his only children and co-heiresses at law, and he was at his death seised in fee simple of the hereditaments intended to be hereby conveyed: AND WHEREAS the said A. B. attained the age of twenty-one years on the —— day of ——, but the said E. F. is an infant: AND WHEREAS by a decree of the High Court of Justice (Chancery Division), dated, &c., and made in a cause wherein the said A. B. is plaintiff, and the said E. F., defendant, it was ordered on the request of the plaintiff that the hereditaments intended to be hereby conveyed be sold: AND it was determined that upon such sale the defendant E. F. would be a trustee of her undivided moiety of the said hereditaments for the purchaser thereof within the meaning of the Trustee Act, 1850, and the Court appointed the said C. D. to convey the moiety of the said E. F. accordingly: AND WHEREAS (*Recite sale by auction, and G. H. declared highest bidder—chief clerk's certificate—order to pay purchase money into Court, and payment by purchaser accordingly, supra*, p. 376, *mutatis mutandis*): NOW THIS INDENTURE WITNESSETH, that, in pursuance of the said decree and orders, and in consideration, &c., the said A. B., as beneficial owner, as to one moiety of the hereditaments hereinafter described, and the said C. D., as to the other moiety thereof, for and on behalf of the said E. F. as beneficial owner, hereby respectively convey unto the said G. H., &c. (*Conveyance of parcels to G. H. in fee simple.*)

Witnessing part.

One co-heiress and the person appointed on behalf of other co-heiress convey to purchaser in fee.

IN WITNESS, &c.

individually or collectively, to the extent of one moiety or upwards in the property in question, request the Court to direct a sale of the property and a distribution of the proceeds, instead of a division of the property among the parties interested, the Court shall, unless it sees good reason to the contrary, direct a sale (sec. 4); or if any party interested in the property requests the Court to direct a sale and a distribution of the proceeds, the Court may, unless the other parties interested in the property, or some of them, undertake to purchase the share of the party requesting the sale, direct a sale (sec. 5). The 7th section provides that section 30 of the Trustee Act, 1850, shall apply to cases where in suits for partition, the Court directs a sale instead of a division of the property; and the 8th section declares that sections 23 to 25 (both inclusive) of the Leases and Sales of Settled Estates Act shall extend to money to be received on any sale effected under the authority of the Act. See also the Partition Amendment Act, 39 & 40 Vict. c. 17.

No. CX.

CONVEYANCE *upon a* SALE *of* CHARITY LANDS *with the* APPROVAL *of the* CHARITY COMMISSIONERS (*a*). CONVEYANCE ON SALE OF CHARITY LANDS.

THIS INDENTURE, made the —— day of ——, BETWEEN A. B. of, &c., and C. D. of, &c., the trustees of a charity called, &c. (*state the title of the charity*), of the one part, and E. F. of, &c. (*purchaser*), of the other part: WHEREAS the said A. B. and C. D. lately agreed to sell to the said E. F. the hereditaments intended to be hereby conveyed (being part of the lands belonging to the said charity), at the price of £——, but subject to the approbation of the said sale by the Charity Commissioners for England and Wales: AND WHEREAS by an order under the common seal of the said Charity Commissioners, dated the —— day of ——, the said Commissioners having inquired into the circumstances, and being satisfied that the proposed sale would be advantageous to the charity, did authorize the said sale, and give directions to the said A. B. and C. D. to carry the same into effect: NOW THIS INDENTURE WITNESSETH, that in pursuance of the said agreement, and by virtue of the said order of the said Charity Commissioners, and in consideration of the sum of £—— to the said A. B. and C. D. paid by the said E. F., &c. (*the receipt, &c.*), the said A. B. and C. D., as trustees, &c. (*Conveyance by A. B. and C. D. to E. F. in fee.*)

Parties. Agreement for sale by trustees of charity. Subject to approval of Charity Commissioners. Order of Charity Commissioners approving sale. Witnessing part. Consideration. Trustees convey to purchaser in fee.

IN WITNESS, &c.

No. CXI.

CONVEYANCE *of* FREEHOLDS *to a* PURCHASER *in consideration of a* GROSS SUM, *and also of an* ANNUITY *charged on the* LAND (*b*). CONVEYANCE IN CONSIDERATION OF ANNUITY.

THIS INDENTURE, made the —— day of ——, BETWEEN A. B. of, &c. (*vendor*), of the one part, and C. D. of, &c. (*pur-*

Parties. Agreement for sale.

(*a*) See 16 & 17 Vict. c. 137, s. 24; 23 & 24 Vict. c. 136, s. 16.

(*b*) The stamp on this deed will be £5 in respect of the gross sum, and £1 5*s.* in respect of the annuity. See 33 & 34 Vict. c. 97, sect. 72, (sub-sect. 3), and *suprà*, p. 215.

CONVEYANCE IN CONSIDERATION OF ANNUITY.

chaser), of the other part: WHEREAS the said A. B. hath agreed to sell to the said C. D., the hereditaments hereinafter described, in consideration of the sum of £1000, and also in consideration of an annual sum or yearly rent-charge of £20, payable to the said A. B. for his life, and to be secured to him as hereinafter mentioned: NOW THIS INDENTURE WITNESSETH, that in consideration of the sum of £1000 to the said A. B. paid by the said C. D., (*the receipt, &c.*), and also in consideration of the annual sum or yearly rent-charge of £20 hereinafter limited and secured to the said A. B., the said A. B., as beneficial owner, hereby conveys unto the said C. D., ALL, &c. (*parcels*): TO HOLD the same unto the said C. D., in fee simple: TO THE USE that the said A. B. may henceforth during his life receive an annual sum or yearly rent-charge of £20, to be issuing out of the said hereditaments and premises, and to be paid by two equal half-yearly payments, on the —— day of —— and the —— day of —— in every year, the first of such half-yearly payments to be made on the —— day of —— next (*a*): And subject to and charged with the said annual sum or yearly rent-charge, TO THE USE of the said C. D., in fee simple: AND THE said C. D. hereby covenants with the said A. B. to pay to the said A. B., the said annual sum of £20, at the times and in the manner hereinbefore appointed for the payment thereof.

Witnessing part.

Consideration of gross sum, and of annuity.

Vendor conveys parcels to purchaser,

to use that annuity be received by vendor,

and, subject to annuity, to use of purchaser.

Covenant by purchaser to pay annuity.

IN WITNESS, &c.

No. CXII.

CONVEYANCE IN CONSIDERATION OF ANNUITY WITH FULLER POWERS, AND POWER TO SUBSTITUTE GOVERNMENT ANNUITY.

CONVEYANCE *to a* PURCHASER *in* CONSIDERATION *of an* ANNUITY, *with fuller* POWERS *for* SECURING *it than in the last* PRECEDENT, *and with* POWER *for* PURCHASER *to* BUY *a* GOVERNMENT ANNUITY *in* SUBSTITUTION (*b*).

Parties.

THIS INDENTURE, made, &c., BETWEEN A. B. of, &c. (*vendor*), of the first part, C. D. of, &c. (*purchaser*), of the second

(*a*) See note, *supra*, p. 346.
(*b*) The stamp on this deed will be £6.

CONVEYANCE IN CONSIDERATION OF ANNUITY, WITH FULLER POWERS, AND POWER TO SUBSTITUTE GOVERNMENT ANNUITY.

part, and E. F. of, &c. (*trustee*), of the third part: WHEREAS the said A. B. has agreed to sell to the said C. D. the hereditaments hereinafter described, in consideration of an annual sum or yearly rent-charge of £100, payable to the said A. B. for his life, and to be secured as hereinafter mentioned: NOW THIS INDENTURE WITNESSETH, that in consideration of the annual sum or yearly rent-charge of £100, hereinafter limited and secured, the said A. B. as beneficial owner, hereby conveys unto the said E. F., ALL, &c. (*parcels, &c.*): TO HOLD the same unto the said E. F., in fee simple: TO THE USE that, &c. (*Limitation of rent-charge to A. B. for his life* (*c*): AND SUBJECT TO and charged with the said annual sum or yearly rent-charge of £100, TO THE USE of the said E. F., for the term of one thousand years, computed from the day of the date of these presents, without impeachment of waste, upon the trusts hereinafter declared concerning the same: AND FROM AND AFTER the expiration or sooner determination of the said term of one thousand years, and in the meantime subject thereto and to the trusts thereof, TO THE USE of the said C. D., in fee simple: AND IT IS HEREBY AGREED AND DECLARED that the said hereditaments and premises are hereby limited to the said E. F., for the said term of one thousand years, UPON TRUST that if the said yearly rent-charge of £100, or any part thereof, shall at any time be unpaid for forty days after any of the times hereby appointed for payment thereof (although there shall not have been any legal demand made thereof), then and so often as the same shall happen, the said E. F., his executors, administrators, or assigns, shall, on the request in writing of the said A. B., or his assigns, enter into the possession or receipt of the rents and profits of the said hereditaments and premises, and let the same, or do and shall, on the like request, either mortgage or sell the said hereditaments and premises, or any of them, or any part thereof, for all or any part of the said term of one thousand years: AND IT IS HEREBY AGREED AND DECLARED, that if on any occasion on which the said trust for sale of the premises comprised in the said term of one thousand years shall be exercisable, the said A. B., or his assigns, shall request the said E. F., his executors, administrators, or assigns, to offer and

Recite agreement for sale in consideration of annuity.

Witnessing part.

Vendor conveys parcels.

To the use that vendor may receive rent-charge, &c.,

and subject thereto to use of trustee for term,

with remainder to purchaser in fee.

Declaration of trusts of term.

Power to sell the fee simple

(*c*) See *suprà*, p. 380, and note at p. 346.

CONVEYANCE IN CONSIDERATION OF ANNUITY, WITH FULLER POWERS, AND POWER TO SUBSTITUTE GOVERNMENT ANNUITY.

contract for the sale of the said premises in fee simple, instead of offering the same for sale for the residue of the said term only, the said E. F., his executors, administrators, or assigns, shall offer and contract for the sale of the said premises in fee simple accordingly: AND upon any such sale in fee simple, it shall be lawful for the said A. B., or his assigns, to appoint the same to the purchaser, or as he shall direct, freed and discharged from the uses, trusts, and provisions limited, declared, and contained by and in these presents: AND IT IS HEREBY FURTHER AGREED AND DECLARED, that no purchaser at any sale of the premises, either for the term of one thousand years or in fee simple, shall be concerned to see or inquire whether the case has happened in which such sale ought to be made, or to regard any notice to the contrary: AND IT IS HEREBY FURTHED AGREED AND DECLARED, that the said E. F., his executors, administrators and assigns, shall stand possessed of all monies to arise by any sale or mortgage made in pursuance of these presents, and of the rents and profits of the said premises, from the time of his or their entering into receipt thereof until the said premises shall be sold, UPON TRUST that he or they shall apply the same in payment to the said A. B., or his assigns, of all arrears of the said yearly rent-charge of £100, and all costs, charges, and expenses to be incurred by the said A. B. or his assigns by reason or on account of the non-payment of the said yearly rent-charge, or any part thereof, or otherwise relating thereto, and also all costs, charges, and expenses to be incurred by the said E. F., his executors, administrators, or assigns, in or about the execution of the trusts and powers of these presents, and shall invest the residue of the monies to be received by the said E. F., his executors, administrators, or assigns, from any such sale or mortgage as aforesaid, or in respect of the rents and profits of the said premises, in or upon any of the parliamentary stocks or public funds of Great Britain, or at interest upon government or real securities in the name or names of the said E. F., his executors, administrators, or assigns, with power to vary such investments for others of the same or a like nature, and shall stand possessed of the monies so to be invested, and the stocks, funds, and securities in or upon which the same shall be invested, upon trust, by and out of the dividends, interest, and annual produce thereof, and if

Trusts of sale or mortgage monies.

such dividends, interest, and annual produce shall be insufficient, then, in addition thereto, by calling in and disposing from time to time of a sufficient part of the principal money so to be invested, or the stocks, funds, or securities representing the same, to pay unto the said A. B., or his assigns, the yearly rent-charge of £——, as and when the same shall grow due and be payable, or so much thereof as shall from time to time be in arrear and unpaid, and all costs, charges, and expenses to be incurred by the said A. B., or his assigns, by reason or on account of the non-payment thereof, or otherwise relating thereto, and also all costs, charges, and expenses to be incurred by the said E. F., his executors, administrators, or assigns, in or about the execution of the trusts and powers of these presents, and subject to the trusts hereinbefore declared in trust for the said C. D., his executors, administrators, and assigns, for his and their own absolute use and benefit: AND THE SAID C. D. hereby covenants with the said A. B., that the said C. D., his heirs, executors, administrators, or assigns, will pay to the said A. B. the said annual sum or yearly rent-charge of £100, at the times and in the manner hereinbefore appointed for payment of the same, and also will, so long as the said yearly rent-charge shall remain charged on the messuage and buildings hereby conveyed, keep the same insured against loss or damage by fire in some public office of insurance, in a sum not less than two-thirds of the value thereof, and will on demand produce the policy or policies of insurance for the time being, and the receipts for the premiums in respect thereof, to the said A. B.: AND IT IS HEREBY DECLARED, that the power of appointing a new trustee or new trustees conferred by statute shall for the purposes of these presents be vested in the said A. B.: PROVIDED ALWAYS, and it is hereby agreed and declared, that in case the said C. D., his heirs or assigns, shall at any time during the life of the said A. B., purchase in the name of the said A. B., from the Commissioners for the Reduction of the National Debt, a government annuity of £100 for the life of the said A. B., so that the first half-yearly payment of such government annuity shall be made within six calendar months after the quarterly day of payment of the yearly rent-charge hereby secured last preceding the day of the purchase of such government annuity, and in case the said C. D., his heirs or assigns, shall on the purchase of such

CONVEYANCE IN CONSIDERATION OF ANNUITY, WITH FULLER POWERS, AND POWER TO SUBSTITUTE GOVERNMENT ANNUITY.

Covenant by purchaser to pay annuity,

and to insure against fire.

Appointment of new trustees.

Power to purchaser to buy government annuity for vendor.

CONVEYANCE IN CONSIDERATION OF ANNUITY, WITH FULLER POWERS, AND POWER TO SUBSTITUTE GOVERNMENT ANNUITY.

government annuity have paid up all arrears of the yearly rent-charge hereby created up to and including the last-mentioned quarterly day, and all costs, charges and expenses due in respect of the same yearly rent-charge then and in such case the said A. B. will accept the government annuity so to be purchased in lieu of and substitution for the said yearly rent-charge, and thereupon the said rent-charge, and the said term of one thousand years, and all the trusts, powers, and provisions herein declared and contained for securing and enforcing payment of the same shall cease, and the said C. D., his heirs and assigns, shall thenceforth be seised in possession of the said hereditaments and premises freed and discharged from the said yearly rent-charge, and the said term of one thousand years and the trusts thereof, and from all other the trusts, powers, and provisions herein contained for securing and enforcing payment of the same yearly rent-charge and every of them.

IN WITNESS, &c.

No. CXIII.

CONVEYANCE IN CONSIDERATION OF ANNUITY FOR LIVES OF VENDOR AND WIFE SUCCESSIVELY.

CONVEYANCE *of* FREEHOLDS *to a* PURCHASER *in* CONSIDERATION *of an* ANNUITY PAYABLE *to the* VENDOR *and his* WIFE *successively for life and* SECURED *by the* PURCHASER'S BOND (*a*).

THIS INDENTURE, made the —— day of ——, BETWEEN A. B. of, &c. (*vendor*), of the one part, and C. D. of, &c. (*purchaser*), of the other part: WHEREAS the said A. B. has agreed to sell the hereditaments hereinafter described to the said C. D., in consideration of an annuity of £100 to be paid to the said A. B. during his life, and after his death to E. B. his wife, if she shall survive him, during her life, and to

Parties.

Recite agreement for sale in consideration of annuity.

(*a*) The stamp on this deed will be £6, and the stamp on the bond to secure the annuity will be 10*s.*: 33 & 34 Vict. c. 97, s. 72 (sub-sect. 4).

be secured by the bond of the said C. D.: AND WHEREAS immediately before the execution of these presents, the said C. D. has executed to the said A. B. his bond in a sufficient penalty, bearing even date with these presents, subject to a condition thereunder written for making void the same upon payment by the said C. D., his heirs, executors, or administrators, of an annuity of £100 to the said A. B. during his life, and after his decease to the said E. B., if she shall survive the said A. B., during her life, and to be paid half-yearly at the times therein mentioned: NOW THIS INDENTURE WITNESSETH, that in consideration of the annuity of £100, secured by the said bond as aforesaid, the said A. B., as beneficial owner, hereby conveys, &c. (*Conveyance of freeholds to C. D., suprà*, p. 225).

CONVEYANCE IN CONSIDERATION OF ANNUITY FOR LIVES OF VENDOR AND WIFE SUCCESSIVELY.

Bond to secure annuity.

Witnessing part.

Consideration.

Vendor conveys to purchaser in fee.

IN WITNESS, &c.

No. CXIV.

GRANT *on a* SALE *of* ANNUITY *to* GRANTEE *for his own Life, charged upon Lands of* GRANTOR, COVENANT *by* GRANTOR *to pay* ANNUITY (*a*).

GRANT OF ANNUITY FOR LIFE OF GRANTEE SECURED ON FREEHOLDS OF GRANTOR.

THIS INDENTURE, made the —— day of ——, BETWEEN A. B. of, &c. (*grantor*), of the one part, and C. D. of, &c. (*grantee*),

Parties.

(*a*) By the 17 & 18 Vict. c. 90, the 53 Geo. 3, c. 141, and the 3 Geo. 4, c. 92 (which required the enrolment of grants of annuities), are repealed, and by the 12th section of the 18 & 19 Vict. c. 15, it is provided that any annuity or rent-charge granted after the passing of the Act, otherwise than by marriage settlement, for one or more life or lives, or for any term of years or greater estate determinable on one or more life or lives, shall not affect any lands, tenements, or hereditaments, as to purchasers, mortgagees, or creditors, unless and until a memorandum or minute containing the name, and the usual or last known place of abode, and the title, trade, or profession of the person whose estate is intended to be affected thereby, and the date of the deed, bond, instrument, or assurance whereby the annuity or rent-charge is granted, and the annual sum or sums to be paid shall be left with the Senior Master of the Court of Common Pleas at Westminster, who shall forthwith enter the particulars aforesaid in a book in alphabetical order by the name of the person whose estate is intended to be affected by the annuity or rent-charge, together with the year and the day of the month when every such memorandum or minute is so left with

Registration of annuities.

GRANT OF ANNUITY FOR LIFE OF GRANTEE SECURED ON FREEHOLDS OF GRANTOR.

of the other part; WHEREAS the said A. B. has agreed to sell to the said C. D. an annuity of £80, for the life of the said C. D., and to be secured in manner hereinafter mentioned, at the price of £——: NOW THIS INDENTURE WITNESSETH, that in consideration of the sum of £—— to the said A. B. paid by the said C. D. on or before the execution of these presents (*the receipt, &c.*), the said A. B., as beneficial owner, hereby grants unto the said C. D., ONE annuity of £80, during the life of the said C. D., to commence and be computed from the day of the date of these presents, and to be charged upon and issuing and payable out of the lands and hereditaments comprised in the schedule hereto, and to be paid by equal half-yearly payments on the —— day of —— and the —— day of —— in every year, the first half-yearly payment thereof to be made on the —— day of —— next (*b*): AND THE SAID A. B. hereby covenants with the said C. D. that the said A. B., his heirs, executors, or administrators, will pay to the said C. D., during his life, the said annuity of £—— on the days and in the manner aforesaid (*c*).

Recite agreement for sale of annuity.

Witnesseth.

Consideration.

Grant of annuity for life of grantee.

Charged upon lands of grantor.

Covenant by grantor to pay annuity.

IN WITNESS, &c.

THE SCHEDULE ABOVE REFERRED TO.

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him, and he shall be entitled for every such entry to the sum of two shillings and sixpence, and all persons shall be at liberty to search the same book, together with the other books or registers in the office, on payment of the sum of one shilling. By the 14th section it is provided that the Act shall not extend to require the registry of annuities or rent-charges *given by will*. See also 23 & 24 Vict. c. 115, as to the entry of satisfaction.

(*b*) See previous note.

(*c*) The powers of distress and entry and the demise to trustees for a term to secure the annuity, which were formerly inserted in annuity deeds, are now unnecessary. See Conveyancing Act 1881, sec. 44.

No. CXV.

VOLUNTARY GRANT *of an* ANNUITY *for the* JOINT LIVES *of the* GRANTOR *and* GRANTEE, *secured by an* ASSIGNMENT *of a* LIFE INTEREST *in* STOCK.

GRANT OF ANNUITY SECURED ON LIFE INTEREST IN STOCK.

THIS INDENTURE, made, &c., BETWEEN A. B. of, &c. (*grantor*), of the one part, and C. D. of, &c. (the mother of the said A. B.) (*grantee*), of the other part (*Recite indenture under which A. B. is entitled to a life interest in a sum of £—— £3 per Cent. Consolidated Bank Annuities standing in names of E. F. and G. H. as trustees*): AND WHEREAS the said A. B. hath agreed to grant and assign to the said C. D. an annuity of £40 during their joint lives charged upon the life interest of the said A. B. in the said trust fund in the manner hereinafter expressed: NOW THIS INDENTURE WITNESSETH that, the said A. B., in consideration of his natural love and affection for the said C. D., hereby grants and assigns unto the said C. D. ONE annuity of £40 during the joint lives of the said A. B. and C. D., to commence from the day of the date of these presents, and to be charged upon and issuing and payable out of the dividends, interest, and annual produce of the said sum of £—— Consolidated £3 per Cent. Bank Annuities now standing in the names of the said E. F. and G. H. in the books of the Governor and Company of the Bank of England as hereinbefore is mentioned, or the stocks, funds, and securities for the time being representing the same, to be paid by equal half-yearly payments, the first of such half-yearly payments to be made on the —— day of —— next: AND THE SAID A. B. hereby directs the said E. F. and G. H., and the survivor of them, or other the trustees or trustee for the time being of the said recited indenture of settlement, to pay the said annuity out of the said dividends, interest, and annual produce in manner aforesaid: PROVIDED ALWAYS, that the grant of the aforesaid annuity shall not prevent or interfere with the exercise of the power contained in the said indenture of settlement of varying the investments of the said sum of £—— Consolidated £3 per Cent. Bank Annuities, or the stocks, funds, and securities for the time being representing the

Parties.

Witnessing part.

Grant of annuity.

Direction to trustees to pay annuity.

Grant of annuity not to prejudice power of varying investments contained in settlement.

GRANT OF ANNUITY SECURED ON LIFE INTEREST IN STOCK.

Income to be sole fund, and grantor not to be liable

same, or any part thereof, but such power may be exercised in all respects as if these presents had not been executed. Provided also that the interest, dividends, and annual produce hereinbefore charged with the said annuity, shall be and remain the sole fund charged therewith, and the said A. B. shall not be personally liable for the payment thereof.

IN WITNESS, &c.

No. CXVI.

DEED *of* ENFRANCHISEMENT *of* COPYHOLDS.

ENFRANCHISEMENT OF COPYHOLDS.

Parties.

Recite devise of hereditaments to lord.

Admittance of copyholder.

Agreement for enfranchisement.

Consideration.

Lord enfranchises parcels.

THIS INDENTURE, made the —— day of ——, BETWEEN A. B. of, &c. (*lord of the manor*), of the one part, and C. D. of, &c. (*copyholder*), of the other part: WHEREAS G. H., late of, &c., being seised in fee simple of (amongst other hereditaments) the manor of E. with the appurtenances, duly made his will, dated the —— day of ——, and thereby devised all his manors, &c., in the county of ——, unto and to the use of the said A. B., his heirs and assigns (*Recite testator's death and probate of his will*): AND WHEREAS, at a general court baron holden for the said manor of E., on or about the —— day of ——, the said C. D. was duly admitted to the hereditaments hereinafter described, to hold the same to him, his heirs and assigns, at the will of the lord, according to the custom of the said manor, at and under the rents, fines, heriots, suits, and services therefor due and of right accustomed: AND WHEREAS the said C. D. hath agreed with the said A. B. to enfranchise the hereditaments hereinafter described, for the sum of £——: NOW THIS INDENTURE WITNESSETH, that in consideration of the sum of £—— to the said A. B., paid by the said C. D. on or before the execution of these presents (*the receipt whereof, &c.*), the said A. B., as beneficial owner, hereby enfranchises and conveys unto the said C. D., ALL, &c. (*parcels*): TO HOLD the same, as freehold, freed and discharged from all rents, fines,

heriots, suits and services, and other incidents of copyhold tenure, unto and to the use of the said C. D. in fee simple : AND THIS INDENTURE ALSO WITNESSETH, that for the consideration aforesaid, the said A. B. hereby grants unto the said C. D., ALL such commonage and right of common in, upon, and over the respective waste and commonable lands of the said manor of ——, as the said C. D., or any person or persons through whom he claims, held, enjoyed, or was entitled to in respect of and as appurtenant to the said hereditaments and premises hereby enfranchised, or any of them, and the freehold and inheritance of such commonable rights as aforesaid in like manner as the said C. D., or his customary heirs, could have used or exercised the same if the said premises had not been enfranchised, TO HOLD the same unto and to the use of the said C. D., in fee simple.

ENFRANCHISEMENT OF COPYHOLDS.

Grant by lord of the manor of commonable rights.

To grantee.

IN WITNESS, &c.

No. CXVII.

DEED *of* ENFRANCHISEMENT *by* ECCLESIASTICAL COMMISSIONERS *of* COPYHOLDS *for lives.*

ENFRANCHISEMENT OF COPYHOLDS FOR LIVES.

THIS INDENTURE, made the —— day of ——, BETWEEN the Ecclesiastical Commissioners for England, of the one part, and A. B. of, &c. (*copyholder*), of the other part: WHEREAS at a court holden in and for the manor of ——, in the county of ——, the Dean and Chapter of the Cathedral Church of ——, at ——, lords of the said manor, granted unto the said A. B. (*parcels as described in Court Rolls*), To hold the same unto the said A. B. and his heirs for and during the lives of ——, and the lives and life of the longest livers and liver of them, at and under the yearly rent of £——, and the heriots, suits, and services therefor due and of right accustomed, and the said A. B. was thereupon admitted tenant to the said premises : AND WHEREAS under or by virtue of the several Acts of Parliament relating to the Ecclesiastical Commissioners for England and an Order of Her present Majesty in Council, dated

Parties.

Recite grant by copy of Court roll to A. B. for lives.

Order in Council transferring capitular estates to Ecclesiastical Commissioners.

Order in Council empowering Ecclesiastical Com-

ENFRANCHISEMENT OF COPYHOLDS FOR LIVES.

the —— day of ——, and published in the London Gazette on the —— day of ——, ratifying a scheme of the Ecclesiastical Commissioners recited in the said order, All the manors, lands, tithes, tenements, and hereditaments which then belonged either in possession or reversion to the said Dean and Chapter (with certain exceptions not affecting the said manor of ——) became vested in the said Ecclesiastical Commissioners: And whereas by an Order of Her Majesty in Council, dated, &c., and published, &c. (*Recite Order in Council authorising Ecclesiastical Commissioners to dispose of the property vested in them under previous order*): And whereas the said Ecclesiastical Commissioners have agreed with the said A. B. for the enfranchisement and sale to him of the hereditaments hereinafter described (being the hereditaments to which the said A. B. was admitted tenant on the —— day of —— as aforesaid), for the sum of £——: NOW THIS INDENTURE WITNESSETH, that in pursuance of the said agreement, and in consideration of the sum of £——, paid by the said A. B. into the Bank of England, to the credit of the said Ecclesiastical Commissioners, as appointed by them in that behalf (the receipt whereof is testified by the memorandum indorsed hereon, and the payment whereof the Ecclesiastical Commissioners hereby acknowledge), the said Ecclesiastical Commissioners as trustees hereby enfranchise and convey unto the said A. B. All, &c. (*parcels by reference to a schedule*), To hold the same unto and to the use of the said A. B., in fee simple, as freehold, henceforth and for ever freed and discharged from all rents, heriots, fines, suits, services, and other incidents of copyhold tenure:

missioners to dispose of property.

Agreement for enfranchisement and sale.

Consideration.

Ecclesiastical Commissioners enfranchise parcels,

to use of copyholder in fee.

In witness whereof the said Ecclesiastical Commissioners have hereunto set their common seal the day and year first above-written.

The Schedule above referred to.

No. CXVIII.

DEED *of* ENFRANCHISEMENT *of* COPYHOLDS *for* LIVES *by the* RECTOR *of a* PARISH *with the consent of the* ECCLESIASTICAL COMMISSIONERS *and the* PATRON *under* 24 *&* 25 *Vict. c.* 105, *where the* CESTUIS QUE VIE *are the* TENANTS *on the* COURT ROLLS, *as* TRUSTEES *for the* BENEFICIAL *owner* (*a*).

ENFRANCHISEMENT WHERE CESTUIS QUE VIE ARE TENANTS.

THIS INDENTURE, made the —— day of ——, BETWEEN the Reverend A. B., rector of ——, and as such rector lord of the manor of the rectory of ——, of the first part, the Ecclesiastical Commissioners for England of the second part, C. D. of, &c., the patron of the said rectory, of the third part, and E. F. of, &c. (*copyholder*), of the fourth part: WHEREAS at a court holden in and for the said manor on the —— day of ——, 18—, the lord of the said manor granted in reversion to L. M. of, &c., then aged, &c., the lands and hereditaments hereinafter described and intended to be hereby enfranchised and conveyed with their appurtenances, To hold the same unto the said L. M. for his life from and after the deaths, surrenders, or forfeitures of X. and Y. respectively, In trust nevertheless for the said E. F., his heirs and assigns, at and under the yearly rent of £——, and the heriots, suits, and services therefor due and of right accustomed: AND WHEREAS at a court holden in and for the said manor on the —— day of ——, 18—, the homage presented the deaths of the said X. and Y., and thereupon the lord of the said manor granted to N. O. of, &c., then aged, &c., and P. Q. of, &c., then aged, &c., the said lands and hereditaments, To hold the same unto the said N. O. and P. Q. from and after the death, surrender, or forfeiture of the said L. M. during their lives and the life of the longest liver of them, upon trust nevertheless for the said E. F., his heirs and assigns, at and under the said yearly rent of £——, and the heriots, suits, and services therefor due and of right accustomed: AND WHEREAS the said A. B., as the rector of ——, is now the lord of the manor of

Parties.

Recite grant of copyholds in reversion to a grantee for his own life in trust for equitable owner.

Further grant for lives in trust on death of two of the lives.

That the rector is the lord

(*a*) See stat. 21 & 22 Vict. c. 57, conferring powers on Ecclesiastical Corporations, with certain exceptions, and with approval of Ecclesiastical Commissioners, and also with certain consents to sell, &c.

ENFRANCHISEMENT WHERE CESTUIS QUE VIE ARE TENANTS.

the rectory of ——, and the said C. D. is the patron of the said rectory: AND WHEREAS it has been made to appear to the satisfaction of the Ecclesiastical Commissioners for England that the lands and hereditaments hereinafter described may, to the permanent advantage of the estate or endowment belonging to such rectory, be enfranchised and sold for the sum and in manner hereinafter mentioned: AND WHEREAS three months' notice in writing of such proposed enfranchisement and sale has been given to the Right Reverend the Lord Bishop of ——, in whose diocese the said rectory is situate: AND WHEREAS under the powers enabling him in this behalf contained in the Act of Parliament passed, &c., and intituled, &c. (*b*), and of the several Acts therein referred to, the said A. B., with the approval of the said Ecclesiastical Commissioners testified as hereinafter is mentioned, and also with the consent and approval of the said C. D. as the patron of the said rectory, hath agreed with the said E. F. for the enfranchisement and sale of the lands and hereditaments hereinafter described for the sum of £——: NOW THIS INDENTURE WITNESSETH, that in pursuance of the said agreement in this behalf and in consideration of the sum of £—, paid by the said A. B. into the Bank of England, to the account of the Ecclesiastical Commissioners for England, by their direction (the receipt whereof is testified by the memorandum indorsed thereon, and the payment whereof the Ecclesiastical Commissioners hereby acknowledge), the said A. B. doth by these presents in pursuance and exercise of the power for this purpose contained in the said Act, and of all other powers (if any) enabling him in this behalf, and with the consent and approval of the said Ecclesiastical Commissioners (testified by their being parties to and executing these presents), and also with the consent and approval of the said C. D. as the patron of the said rectory, testified by his being a party to and executing these presents, enfranchise, and convey unto the said E. F., ALL, &c. (*parcels*): TO HOLD the same unto the said E. F. in fee simple, To the use of the said L. M., N. O., and P. Q., for their respective lives in succession according to the order of their names in the several copyhold grants hereinbefore recited, Nevertheless in trust for the

That Ecclesiastical Commissioners are satisfied that it is for the advantage of the rectory to enfranchise.

That notice has been given to the bishop.

Agreement by rector with consent of Ecclesiastical Commissioners and patron to enfranchise.

Consideration.

The rector,

with such consent and approval as aforesaid,

enfranchises parcels to grantee to use of cestuis que vie for their lives, in trust for the equitable owner;

(*b*) 24 & 25 Vict. c. 105.

said E. F., his heirs and assigns, and to be surrendered or conveyed as he or they shall direct (*c*), And from and after the death of the last survivor of them the said L. M., N. O., and P. Q., To the use of the said E. F. in fee simple, to the intent that immediately upon the execution of these presents, the copyhold tenure of the said premises, and all rents, fines, heriots, suits, services, and rights incident thereto, may be extinguished: And the said A. B. hereby covenants with the said E. F. and his heirs, that the said A. B. hath not executed or done or knowingly been party or privy to any deed or thing whereby the hereditaments and premises hereby enfranchised and conveyed, or any part thereof, are, is, or may be impeached, charged, affected, or incumbered in title, estate, or otherwise, or whereby the said A. B. is in anywise hindered from enfranchising and conveying the said hereditaments and premises in manner aforesaid.

ENFRANCHISEMENT WHERE CESTUIS QUE VIE ARE TENANTS.

and after death of the survivor of cestuis que vie, to use of equitable owner in fee.

To the intent that copyhold tenancy be extinguished.

Covenant by rector against incumbrances.

In witness, &c.

No. CXIX.

DEED *of* Enfranchisement *of* Copyholds *for* Lives *under similar circumstances as last Precedent.* (*Another form.*)

ENFRANCHISEMENT OF COPYHOLDS FOR LIVES. (*Another Form.*)

THIS INDENTURE (*same parties and recitals as in last Precedent*): And whereas it has been arranged that the said enfranchisement and sale shall be carried into effect in manner following (that is to say), that the said L. M., N. O., and P. Q. shall in the first place surrender the said hereditaments to the said A. B. as lord of the said manor, so as to extinguish the copyhold tenure thereof, and that thereupon the said A. B. shall grant the same hereditaments as freehold to the use of the said E. F., in fee simple, in the manner hereinafter expressed:

Recite arrangement how enfranchisement should be carried into effect.

Surrender to lord that copyhold tenure may be extinguished.

(*c*) It will be observed that under an enfranchisement taken in this form the legal estate will be vested in the old *cestuis que vie* during their lives, which legal estate will have to be got in by a separate deed.

ENFRANCHISEMENT OF COPYHOLDS FOR LIVES. (*Another Form.*)

AND WHEREAS in part pursuance of the said arrangement the said L. M., N. O., and P. Q. have by the direction of the said E. F., and before the execution of these presents, surrendered into the hands of the said A. B., as lord of the said manor out of court, the hereditaments hereinafter described with their appurtenances, To the intent that the copyhold tenure thereof may be extinguished: NOW THIS INDENTURE WITNESSETH, that in pursuance of the said agreement in this behalf, and in consideration, &c. (*as in last Precedent*), the said A. B. doth by these presents, in pursuance, &c., and with the consent, &c., (*as in last Precedent*), convey unto the said E. F. (*parcels*): TO HOLD the same unto and to the use of the said E. F. in fee simple. (*Covenant by A. B. that he has done no act whereby he is prevented from conveying, suprà*, p. 393.)

Lord, with the consent of the Ecclesiastical Commissioners and patron, conveys parcels to purchaser.

IN WITNESS, &c.

No. CXX.

RELEASE OF EXECUTORY DEVISE.

RELEASE *of an* EXECUTORY DEVISE *to the* OWNER *of the* FIRST ESTATE.

Parties.

THIS INDENTURE, made, &c., BETWEEN A. B. of, &c. (*releasor*), of the one part, and C. D. of, &c. (*releasee*), of the other part: WHEREAS G. H., late of, &c., duly made his will, dated, &c., and thereby devised all his estates, lands, and hereditaments, situate, &c., unto and to the use of the said C. D., his heirs and assigns for ever: but in case the said C. D., should die without leaving lawful issue living at his decease (*a*), then the said

Recite will devising purchaser in fee, but in case he should die without leaving issue, to the vendor.

Restriction on executory limitations.

(*a*) By the Conveyancing Act, 1882, sect. 10, it is provided, with respect to instruments coming into operation after the 31st December, 1882, that where there is a person entitled to land for an estate in fee, or for a term of years absolute or determinable on life, or for term of life with an executory limitation over on default or failure of all or any of his issue, whether within or at any specified period or time or not, that executory limitation shall be or become void and incapable of taking effect, if and as soon as there is living any issue who has attained the age of twenty-one years, of the class on default or failure whereof the limitation over was to take effect.

testator devised his estates, lands, and hereditaments unto and to the use of the said A. B., his heirs and assigns, for ever (*Death of G. H., and probate of his will*): AND WHEREAS the said C. D. hath agreed with the said A. B. for the absolute purchase of all the interest of the said A. B. in the said estates, lands, and hereditaments at —— aforesaid, devised by the said recited will of the said G. H. to the uses and in manner aforesaid, at the price of £——: NOW THIS INDENTURE WITNESSETH, that in pursuance of the said agreement, and in consideration, &c. (*the receipt, &c.*), the said A. B., as beneficial owner, hereby releases and confirms unto the said C. D. ALL the estates, lands, hereditaments, and premises situate as aforesaid, so devised by the said will of the said G. H. to the uses and in manner aforesaid, TO HOLD the same unto and to the use of the said C. D., in fee simple; To the intent that he and they may hold, retain, and enjoy the same, free from the aforesaid executory devise or limitation over to the said A. B., and from all other claims and demands whatsoever of him the said A. B. in respect thereof.

RELEASE OF EXECUTORY DEVISE.

Agreement for purchase.

Release of parcels.

To purchaser in fee free from executory devise.

IN WITNESS, &c.

No. CXXI.

CONVEYANCE *of the* BENEFIT *of an* EXECUTORY DEVISE *to a* PURCHASER (*a*).

GRANT OF AN EXECUTORY DEVISE TO A PURCHASER.

THIS INDENTURE, made, &c., BETWEEN A. B. of, &c. (*vendor*), of the one part, and C. D. of, &c. (*purchaser*), of the other part: WHEREAS (*Recite will creating executory devise, and death of testator and probate of his will*): AND WHEREAS the said A. B. hath agreed to sell all his estate and interest

Parties.

Recite will creating executory devise.

(*a*) By the 6th section of the 8 & 9 Vict. c. 106, all contingent, executory and future interests in tenements or hereditaments of any tenure are disposable by deed.

Contingent estates.

The 8th section of the same Act provides that a contingent remainder

Contingent remainders.

GRANT OF AN EXECUTORY DEVISE TO A PURCHASER.

under the said will in the hereditaments hereinafter described (which hereditaments form part of the real estate devised by the said will) to the said C. D. at the price of £——: NOW THIS INDENTURE WITNESSETH, that in consideration, &c. (*the receipt, &c.*), the said A. B., as beneficial owner, hereby conveys unto the said C. D. ALL the estate, right, and interest of him the said A. B., under or by virtue of the said recited will in and to the hereditaments hereinafter described, namely: ALL, &c. (*here describe parcels*), TO HOLD the same unto and to the use of the said C. D., in fee simple.

Agreement for sale.

Vendor conveys all his estate and interest in the hereditaments under will.

IN WITNESS, &c.

No. CXXII.

CONVEYANCE *of* FREEHOLDS *and* DECLARATION *of* TRUST *of* COPYHOLDS *which had been* PURCHASED *in the* NAME *of a* TRUSTEE *for a* COMPANY (*by* INDORSEMENT).

CONVEYANCE OF FREEHOLDS AND DECLARATION OF TRUST OF COPYHOLDS BY TRUSTEE.

THIS INDENTURE, made, &c., BETWEEN the within-named A. B. of the one part, and the —— Company of the other part: WHEREAS the freehold and copyhold hereditaments comprised in the within-written indenture were purchased by the said A. B. as agent for and on behalf of the said —— Company, and the within-mentioned purchase-money of £—— was paid by the said A. B. out of the proper monies of the said —— Company: AND WHEREAS, at the request of the said —— Company, the said A. B. hath agreed to execute to the said ——

Parties.

Recite purchase of freeholds and copyholds in the name of a trustee.

shall not be defeated by the forfeiture, surrender, or merger of the preceding estate of freehold; so that as to contingent remainders created before the passing of the 40 & 41 Vict. c. 33, its failure depends on the particular estate of freehold naturally determining during the contingency, or on the non-happening of the contingent event. But it is provided by the last-mentioned Act, that every contingent remainder created after the passing of that Act, shall, in the event of the particular estate determining before the contingent remainder vests, be capable of taking effect as if it had originally been created as a springing or shifting use or executory devise or other executory limitation.

Company such assurance of the said freehold hereditaments, and to execute such declaration of trust as to the said copyhold hereditaments, as are hereinafter contained: NOW THIS INDENTURE WITNESSETH, that in pursuance of the aforesaid agreement, and in consideration of the premises, the said A. B., as trustee, hereby conveys unto the said —— Company, ALL the freehold messuages, lands, hereditaments, and premises comprised in and conveyed by the within-written indenture, or expressed so to be: TO HOLD the same unto and to the use of the said —— Company: AND THIS INDENTURE ALSO WITNESSETH, that in further pursuance of the aforesaid agreement, and in consideration of the premises, it is hereby declared that the said A. B., his heirs and assigns, shall henceforth stand seised of and interested in all the copyhold hereditaments and premises in the within-written indenture recited to have been surrendered to the use of the said A. B. as within is mentioned, IN TRUST for the said —— Company, their successors and assigns for ever (*a*).

CONVEYANCE OF FREEHOLDS AND DECLARATION OF TRUST OF COPYHOLDS BY TRUSTEE.

Agreement to execute assurance and declaration of trust.

Conveyance of freeholds to company.

Declaration of trust as to copyholds.

IN WITNESS, &c.

No. CXXIII.

EXCHANGE *by* SEPARATE MUTUAL CONVEYANCES (*b*).

EXCHANGE BY MUTUAL CONVEYANCES.

THIS INDENTURE, made the —— day of ——, BETWEEN A. B. of, &c. (*vendor*), of the first part, and C. D. of, &c. (*purchaser*) of the other part: WHEREAS the said A. B. being seised

Parties.

(*a*) The lord of a manor is not bound to admit a corporation as tenant, because by so doing he would lose the fines, &c., on descents. Hence, when a corporation buys copyholds, the legal estate must be taken in the name of a trustee.

(*b*) An exchange may be carried into effect either by one deed executed in duplicate, or by two deeds. For an exchange by one deed, see the next Precedent. There is no advantage in the arrangement taking the form of a common-law exchange; and before the 8 & 9 Vict. c. 106, such form was objectionable from its making the title to the property given in exchange essential to the title to the property taken in exchange. By the 4th section of the Act above referred to, it is provided that an exchange or partition of any tenements or hereditaments made by deed shall not imply any condition in law.

Proper form of private exchange.

In cases where it may be difficult to carry into effect an exchange of cor-

Exchanges.

EXCHANGE BY MUTUAL CONVEYANCES.

in fee simple of the hereditaments comprised in the first schedule hereto, and the said C. D. being seised in fee simple of the hereditaments comprised in the second schedule hereto have agreed to exchange the same: AND WHEREAS, in part performance of the said agreement, by an indenture bearing even date with these presents, and made between the said C. D. of the one part, and the said A. B. of the other part, the hereditaments comprised in the second schedule hereto have been conveyed by the said C. D. unto and to the use of the said A. B., in fee simple: NOW THIS INDENTURE WITNESSETH, that in further pursuance of the aforesaid agreement, and in consideration of the premises (*Conveyance by A. B., as beneficial owner, of the hereditaments comprised in the first schedule hereto unto and to the use of C. D., in fee simple*).

Recital of agreement for exchange, and of conveyance of land in second schedule.

Witnessing part conveyance of land in first schedule.

IN WITNESS, &c.

THE FIRST SCHEDULE ABOVE REFERRED TO.

THE SECOND SCHEDULE ABOVE REFERRED TO.

poreal or incorporeal hereditaments by private agreement, the same may be effected by the application in writing of the persons interested according to the definition contained in the 8 & 9 Vict. c. 118, ss. 16—21, to the Inclosure Commissioners of England and Wales, who are invested with several statutory powers for this purpose. (See 8 & 9 Vict. c. 118, s. 147; 9 & 10 Vict. c. 70, ss. 9, 10, 11; 10 & 11 Vict. c. 111, ss. 4, 6; 12 & 13 Vict. c. 83, ss. 7, 11; 15 & 16 Vict. c. 79, ss. 17, 31, 32; 17 & 18 Vict. c. 97, s. 5; 20 & 21 Vict. c. 31, ss. 4—11; 22 & 23 Vict. c. 43, ss. 10, 11; 31 & 32 Vict. c. 89.) The exchange is perfected by an order of and under the hands and seal of the commissioners, so that no conveyance is necessary, and it is provided that the land taken upon every such exchange shall enure to, upon, and for the same uses, trusts, and purposes, and subject to the same conditions, charges, and incumbrances, as the lands given in such exchange would have stood limited, or been subject to, in case such order had not been made. (See 8 & 9 Vict. c. 118, s. 147.) The fourth section of the 10 & 11 Vict. c. 111, provides that exchanges of lands may be made excepting or reserving the mines or minerals, together with the rights and easements connected with such mines, and (whether such mines and minerals shall or shall not be reserved) such rights of way and other easements as the parties to the application may have agreed on; and the 6th section of the same Act empowers the Commissioners, with the consent of the lord of the manor and the parties taking copyhold lands in exchange, to declare that the same shall be held as freehold on such terms as may be agreed upon between the parties.

Exchanges under "The Inclosure Acts."

By the 11 & 12 Vict. c. 99, ss. 13, 14, the provisions of the 8 & 9 Vict. c. 118; 9 & 10 Vict. c. 70; and 10 & 11 Vict. c. 111, as to exchanges of

Partitions under "The Inclosure Acts."

No. CXXIV.

EXCHANGE *by* ONE *and the same* DEED *where* MONEY *is paid* by ONE *of the* EXCHANGING PARTIES *to the* OTHER *for* EQUALITY *of* EXCHANGE. EXCHANGE BY ONE DEED.

THIS INDENTURE, made the —— day of ——, BETWEEN A. B. of, &c., of the one part, and C. D. of, &c., of the other part, WITNESSETH, that in consideration of the conveyance by the said C. D. hereinafter contained, and of the sum of £—— paid to the said A. B. by the said C. D. on or before the execution of these presents for equality of exchange (the receipt whereof the said A. B. hereby acknowledges), THE said A. B., as beneficial owner, hereby conveys unto the said C. D., ALL, &c. (*parcels*): TO HOLD the same unto and to the use of the said C. D. in fee simple: AND THIS INDENTURE ALSO WITNESSETH, that in consideration of the conveyance by the said A. B. hereinbefore contained, the said C. D., as beneficial owner, hereby conveys unto the said A. B., ALL, &c. (*parcels*): TO HOLD the same unto and to the use of the said A. B. in fee simple.

Parties.

Mutual conveyances.

IN WITNESS, &c.

CXXV.

CONVEYANCE *by way of* EXCHANGE *by a* TENANT *for* LIFE *under the* POWERS *of the* SETTLED LAND ACT, 1882, *with the* CONSENT *of his* MORTGAGEE. A SUM *is* PAID *to the* TRUSTEES *by way of* EQUALITY *of* EXCHANGE (*a*). EXCHANGE BY TENANT FOR LIFE UNDER POWERS OF SETTLED LAND ACT.

THIS INDENTURE, made the —— day of ——, BETWEEN A. B., of, &c. (*tenant for life*), of the first part, C. D., of, &c.

Parties.

lands not subject to be inclosed, are extended to partitions; and the 10th and 11th sects. of the 22 & 23 Vict. c. 43, provide that lessees need not join in the application for partition, and that the provisions as to notice of dissent shall not apply where the application is made by two-thirds in value of the persons interested in the land or other subject-matter of partition.

(*a*) See The Settled Land Act, 1882, secs. 3, 20, 22.

EXCHANGE BY TENANT FOR LIFE UNDER POWERS OF SETTLED LAND ACT.

(*mortgagee*), of the second part, L. M., of, &c., and N. O., of, &c., of the third part (*trustees*), and X. Y. (*purchaser*), of the fourth part, WHEREAS (*recite settlement, suprà, p.* 299): AND WHEREAS the said L. M. and N. O. are the present trustees of the said settlement for the purposes of the Settled Land Act, 1882 (*a*): AND WHEREAS, by an indenture dated, &c., and made, &c., the said life estate of the said A. B. in the hereditaments so settled as aforesaid was conveyed by the said A. B. unto the said C. D. by way of mortgage for securing the payment by the said A. B. to the said C. D. of the sum of £500 and interest as therein mentioned: AND WHEREAS, in exercise of the power for this purpose contained in the Settled Land Act, 1882, the said A. B. hath agreed to make an exchange with the said X. Y. of the hereditaments hereinafter described (being part of the hereditaments settled by the hereinbefore mentioned indenture as aforesaid), for the hereditaments comprised in the indenture of even date herewith lately the property of the said X. Y., and in consideration of the sum of £—— to be paid by the said X. Y. by way of equality of exchange: AND WHEREAS by an indenture bearing even date with but executed before these presents, and made between the said X. Y. of the first part, the said A. B. of the second part, the said C. D. of the third part, and the said L. M. and N. O. of the fourth part, in consideration of the conveyance hereinafter contained on the part of the said A. B., &c., ALL, &c. (*parcels*), have been conveyed by the said X. Y. by the direction of the said A. B. and with the consent of the said C. D. unto the said L. M. and N. O., in fee simple, TO THE USES, upon the trusts and subject to the powers and provisions which, under the said indenture of settlement or by reason of the exercise of any power of charging therein contained, are subsisting with respect to the hereditaments settled by the said indenture or as near thereto as circumstances will permit, but not so as to increase or multiply charges or powers of charging: NOW THIS INDENTURE WITNESSETH, that in consideration of the conveyance hereinbefore made and executed by the said X. Y. as aforesaid, and also of the sum of £—— paid by him to the said L. M. and N. O. as such trustees as afore-

Present trustees of settlement for purposes of Settled Land Act.

Mortgage by tenant of his life estate.

Agreement for exchange.

Conveyance of land by deed of even date to uses of settlement

In consideration of conveyance of even date,

and of sum paid for equality of exchange.

(*a*) See note (*b*), *supra*, 300.

said, on or before the execution of these presents, the said A. B., in exercise of such power as aforesaid, and of all other powers (if any) him hereunto enabling, and as beneficial owner doth hereby, with the consent of the said C. D., convey unto the said X. Y., ALL, &c. (*parcels*), TO HOLD the same unto and to the use of the said X. Y., in fee simple, AND THE SAID A. B. hereby acknowledges the right of the said X. Y. to production of the said recited indenture of settlement, and to delivery of copies thereof, and hereby undertakes for the safe custody thereof.

EXCHANGE BY TENANT FOR LIFE UNDER POWERS OF SETTLED LAND ACT.

Tenant for life with consent of mortgagee,

Conveys parcels,

to purchaser in fee discharged from uses of settlement.

Acknowledgment by tenant for life of right of purchaser to production of indenture of settlement.

IN WITNESS, &c.

No. CXXVI.

DEED *of* PARTITION *by Three* CO-HEIRESSES, *one of whom pays a* SUM *by way of Equality of* PARTITION.

PARTITION BY CO-HEIRESSES.

THIS INDENTURE, made the —— day of ——, BETWEEN A. B. of, &c., spinster (*one daughter and co-heiress*), of the first part, C. D. of, &c., spinster (*another daughter and co-heiress*), of the second part, E. F. of, &c., spinster (*third daughter and co-heiress*), of the third part, and G. H. of, &c. (*grantee to uses*), of the fourth part (*Recite conveyance of property comprised in the schedules to these presents to M. N., and his decease intestate, leaving no son, but leaving the said A. B., C. D., and E. F., his only daughters and co-heiresses*): AND WHEREAS it was lately agreed between the said A. B., C. D., and E. F., that a partition should be made between them of the hereditaments comprised in the several schedules hereunder written, so that the entirety of the hereditaments comprised in the first schedule should be taken in severalty by the said A. B., and the entirety of the hereditaments comprised in the second schedule should be taken in severalty by the said C. D., and the entirety of the hereditaments comprised in the third schedule should be taken in severalty by the said E. F.: AND

Parties.

Recite conveyance to intestate, and his death, leaving co-heiresses.

Agreement for partition.

PARTITION BY CO-HEIRESSES.

and for payment of a sum for equality of partition.

it was also agreed that the said E. F. should pay for equality of partition the sum of £200 to the said A. B. and C. D. in equal shares: NOW THIS INDENTURE WITNESSETH, that in consideration of the sum of £200 to the said A. B. and C. D. in equal shares paid by the said E. F. on or before the execution of these presents (*the receipt whereof, &c.*), and in consideration of all other the premises,

Witnesseth.

Consideration.

Conveyance by co-heiresses of

THE said A. B., C. D., and E. F., as to their several undivided third parts or shares, and as beneficial owners, hereby convey unto the said G. H., ALL the pieces or parcels of land and other hereditaments described and comprised in the first, second, and third schedules hereunder written, To HOLD the same unto the said G. H. in fee simple, To THE USES following (that is to say):

Hereditaments in first schedule to one co-heiress.

AS TO the hereditaments comprised in the first schedule hereunder written, To the use of the said A. B., in fee simple:

Hereditaments in second schedule to another co-heiress.

AS TO the hereditaments comprised in the second schedule hereunder written, To the use of the said C. D., in fee simple:

And hereditaments in third schedule to the third co-heiress.

AND AS TO the hereditaments comprised in the third schedule hereunder written, To the use of the said E. F., in fee simple.

IN WITNESS, &c.

THE FIRST SCHEDULE ABOVE REFERRED TO.

THE SECOND SCHEDULE ABOVE REFERRED TO.

THE THIRD SCHEDULE ABOVE REFERRED TO.

No. CXXVII.

PARTITION *of* FREEHOLDS *and* COPYHOLDS *and* LEASEHOLDS *by* THREE PERSONS *who are interested in the* FREEHOLDS *and* COPYHOLDS *as coparceners, and in the* LEASEHOLDS *as* TENANTS IN COMMON. *A part of the* FREEHOLDS *and* COPYHOLDS *is allotted to each, and the* TWO LEASEHOLD HOUSES *are allotted equally to two out of the three* TENANTS IN COMMON *at an apportioned* RENT *in respect of each* HOUSE. PARTITION OF FREEHOLDS, COPYHOLDS, AND LEASEHOLDS.

THIS INDENTURE, made, &c., BETWEEN A. B. of, &c. (*one daughter*), of the first part, C. D. of, &c. (*another daughter*), of the second part, E. F. of, &c. (*the other daughter*), of the third part, and G. H. of, &c. (*grantee*), of the fourth part: WHEREAS L. M., late of, &c., being seised in fee simple of the freehold hereditaments comprised in the first, second, and third schedules hereunder written, and being seised, or entitled in customary fee simple of or to the copyhold hereditaments comprised in the fourth, fifth, and six schedules hereunder written, according to the custom of the manor of ——, of which the same are holden, died on the —— day of ——, intestate, leaving the said A. B., C. D., and E. F., his only daughters and co-heiresses, him surviving: AND WHEREAS by an indenture dated the —— day of ——, and made between (*parties*), the two messuages or dwelling-houses situate ——, and being respectively Nos. ——, were demised unto the said A. B., C. D., and E. F., their executors, administrators, and assigns, as tenants in common for a term of fourteen years, at the yearly rent of £10, and subject to the covenants and conditions therein contained, and on the part of the lessees, to be observed and performed: AND WHEREAS it was lately agreed between the said A. B., C. D., and E. F., that a partition should be made between them of the said freehold, copyhold and leasehold hereditaments, so that the freehold and copyhold hereditaments comprised in the said first

Parties.

Testator's seisin of freeholds and copyholds;

and his death intestate,

leaving his three daughters co-heiresses.

Lease of two messuages to three daughters as tenants in common.

Agreement for partition.

Partition of freeholds, copyholds, and leaseholds.

and fourth schedules respectively should be taken in severalty by the said A. B.; that the freehold and copyhold hereditaments comprised in the said second and fifth schedules respectively, and the said leasehold messuage and premises being No. ——, should be taken in severalty by the said C. D.; and the freehold and copyhold hereditaments comprised in the said third and sixth schedules respectively, and the said leasehold messuage and premises being No. ——, should be taken in severalty by the said E. F.: NOW THIS INDENTURE WITNESSETH, that in consideration of the premises the said A. B., C. D., and E. F., according to their several shares and interests, and as beneficial

Conveyance of freeholds.

owners do hereby convey unto the said G. H., ALL the messuages or tenements, lands and hereditaments described and comprised in the first, second and third schedules hereunder written: To HOLD the same unto the said G. H., in fee simple, to the uses

As to certain hereditaments to one daughter; as to other hereditaments to another daughter.

following, that is to say, As TO THE hereditaments comprised in the said first schedule, To the use of the said A. B., in fee simple: As TO THE hereditaments comprised in the said second schedule, To the use of the said C. D., in fee simple: AND AS TO THE hereditaments comprised in the said third schedule, To the use of the said E. F. in fee simple: AND THIS INDENTURE

Covenants by daughter to surrender copyholds.

ALSO WITNESSETH, that in consideration of the premises, THE said C. D. and E. F., as beneficial owners, hereby covenant with the said A. B. that they the said C. D. and E. F. respectively, will at the cost of the said A. B., forthwith surrender into the hands of the lord or lady of the said manor, ALL those the two undivided third parts or shares of the said C. D. and E. F. respectively of and in the copyhold hereditaments comprised in the fourth schedule hereunder written, To the use of the said A. B., in customary fee simple, at the will of the lord of the said manor according to the custom thereof, by and under the rents, suits, and services therefor due and of right accustomed (*Similar covenants by A. B. and E. F. with C. D. to surrender their shares in the copyhold hereditaments comprised in the fifth schedule to the use of C. D., and by A. B. and C. D. with E. F. to surrender their shares in the copyhold hereditaments comprised in the sixth schedule to the use of E. F.*): AND THIS INDENTURE ALSO WITNESSETH, that in consideration of the premises, the said A. B. and C. D., as beneficial owners,

Assignment

hereby assign unto the said E. F., ALL those the two undivided

third parts or shares of the said A. B. and C. D. respectively, of and in ALL, &c. (*one of the messuages comprised in the indenture of lease*): TO HOLD the same unto the said E. F., for all the residue now unexpired of the said term of fourteen years, to the intent that the said E. F., may henceforth be possessed of the entirety of the said messuage and premises for the residue of the said term, subject to the payment of the yearly rent of £5, being one moiety of the said rent of £10 reserved by the said recited indenture of lease, and to the covenants and conditions in the said indenture of lease contained, and on the part of the lessee, to be observed and performed respectively, so far as the same relate to the said messuage and premises: AND THIS INDENTURE ALSO WITNESSETH, that in consideration of the premises, THE said A. B. and E. F., as beneficial owners, hereby assign unto the said C. D., ALL those the two undivided third parts or shares of the said A. B. and E. F. respectively, of and in ALL, &c. (*the other of the messuages comprised in the indenture of lease*): TO HOLD the same unto the said C. D., for all the residue now unexpired of the said term of fourteen years, to the intent that she may be henceforth possessed of the entirety of the last-mentioned messuage and premises for the residue of the said term, subject to the payment of the yearly rent of £5, &c. (*as before,*) AND THE SAID C. D. hereby covenants with the said A. B. and E. F., THAT the said C. D., her executors, administrators, or assigns, will at all times hereafter during the said term of fourteen years granted by the said indenture of lease, pay the yearly rent of £5 in respect of the said messuage and premises, No. ——, &c., and observe and perform the covenants and conditions in the said indenture of lease contained, and which henceforth on the part of the lessee, ought to be observed and performed, so far as the same relate to the last-mentioned messuage and premises; and will at all times hereafter keep indemnified the said A. B. and E. F., and their estates and effects from the payment of the said rent of £5, and the performance of the said covenants and conditions relating to the last-mentioned messuage and premises, and from all claims, and demands on account of the same: AND ALSO that in case the said A. B. and E. F., or their respective executors, administrators, or assigns, or any or either of them, shall at any

PARTITION OF FREEHOLDS, COPYHOLDS, AND LEASEHOLDS.

by two daughters of their shares in one leasehold messuage, to the other daughter at apportioned rent.

Assignment by two daughters of their shares in other leasehold house to the other daughter at apportioned rent.

Covenant by one daughter to pay rent and observe covenants in respect of leasehold premises taken by her.

PARTITION OF FREEHOLDS, COPYHOLDS, AND LEASEHOLDS.

time or times hereafter pay or incur any sum or sums of money, costs, charges, damages, or expenses for or on account of the said yearly rent of £5, covenants and conditions hereinbefore covenanted to be paid, observed, and performed by the said C. D., then and in such case, and so often as the same shall happen, it shall be lawful for the person or persons by whom such sum or sums of money, costs, charges, damages, or expenses shall be paid or incurred as aforesaid, into and upon the messuage and premises hereinbefore assigned unto the said C. D., to enter and distrain for the same, and to dispose of the distress or distresses then and there found, according to law, as landlords may for rents reserved upon leases for years, to the intent that thereby she, he, or they shall and may be fully paid and satisfied all and every such sums and sum of money, costs, charges, damages and expenses, as aforesaid: AND ALSO that in case and so often as aforesaid it shall be lawful for the person or persons, by whom such sum or sums of money, costs, charges, damages, or expenses, shall be paid or incurred as aforesaid, to enter into and upon and to hold all or any part of the last-mentioned messuage and premises, and to receive the rents and profits thereof, for her, his, and their own use until she, he, or they shall thereby or otherwise be fully paid and satisfied the same (*Similar covenants by E. F. to pay rent and observe covenants in respect of the premises taken by her, and grant to A. B. and C. D. of similar powers of distress and entry for securing the payment of such rent and observance of covenants*).

IN WITNESS, &c.

THE FIVE SCHEDULES WILL FOLLOW.

No. CXXVIII.

GRANT *of a* RIGHT *of* WAY (*a*).

GRANT OF RIGHT OF WAY.

THIS INDENTURE, made the —— day of ——, BETWEEN A. B. of, &c. (*grantor*) of the one part, and C. D. of, &c (*grantee*), of the other part: WITNESSETH, that in consideration, &c. (*the receipt, &c.*), THE said A. B., as beneficial owner, hereby grants unto the said C. D., in fee simple, that it shall be lawful for the said C. D., his heirs and assigns, as owner or owners for the time being of the piece of land situate in the parish of ——, in the county of ——, delineated and coloured pink on the map drawn in the margin of these presents, and his and their tenants and servants, and others authorised by him or them, to pass and repass with or without horses, carts, and carriages of all descriptions, over and along a road leading from the —— turnpike road to the said piece of land, through certain pieces of land of the said A. B., situate in the said parish, delineated and coloured green on the said map, and the course of which road is shown on the said map by a dotted line between the points marked A and B thereon: TO THE END and intent that the right of way hereby granted shall be for ever hereafter appurtenant to the said piece of land coloured pink on the said map, for all purposes connected with the use, occupation and enjoyment of the said piece of land, and of the farm and lands of the said C. D. adjoining thereto and accessible through the same by means of the said road: AND ALSO that it shall be lawful for the said C. D., his heirs and assigns, owner or owners for the time being as aforesaid, from time to time, and at all times hereafter, to repair and amend the said road, the right of way over which is hereinbefore granted, in order that the said road may be kept in good repair and condition, and that the same be at all times fit and proper for answering the purposes intended

Parties.

Grant of right of way

to purchaser in fee.

Power to purchaser to repair road.

(*a*) Rights of way are either in gross or appurtenant. A right of way in gross cannot be assigned; a right of way appurtenant to any particular land must be connected with the use and enjoyment of that land, and cannot be granted for purposes wholly unconnected with it; Ackroyd *v.* Smith, 19 L. J. C. P. 315; see also Thorpe *v.* Brumfitt, L. R. 8 Ch. 850.

GRANT OF RIGHT OF WAY.

by these presents (*a*): PROVIDED ALWAYS, that if the said A. B., his heirs or assigns, owners of the land traversed by the said road, shall use the same, then and in such case he or they shall contribute a fair and reasonable proportion of the cost of keeping the same in repair, and if any difference shall arise as to the amount which ought to be so contributed, the same shall be referred to two arbitrators, one to be appointed by each party, and such reference shall be deemed an arbitration within the "Common Law Procedure Act, 1854."

Vendor to contribute towards expense of repair if he uses same.

IN WITNESS, &c.

No. CXXIX.

OF FREEHOLDS AND RIGHT OF WAY OVER OTHER LAND.

CONVEYANCE *of* FREEHOLD LAND *and a* RIGHT OF WAY *over* OTHER LAND.

THIS INDENTURE, made the —— day of ——, BETWEEN A. B. of, &c. (*vendor*), of the one part, and C. D. of, &c. (*purchaser*), of the other part, WITNESSETH, that in consideration of the sum of £—— as purchase-money to the said A. B., paid by the said C. D. on or before the execution of these presents (*the receipt, &c.*), THE said A. B., as beneficial owner, hereby conveys unto the said C. D.: FIRST ALL that, &c. (*parcels*): AND SECONDLY, FULL RIGHT, and liberty, for the said C. D., his heirs and assigns, owner or owners for the time being of the land hereinbefore described, and his and their tenants and servants, and all other persons authorised in that behalf by him or them, from time to time, and at all times hereafter at his and their will and pleasure, for all purposes connected with the use and enjoyment of the said land, to pass and repass, with or without horses, cattle, and other animals, carts, waggons, and carriages, in, along, and over the roadway now making in and through the piece of land situate, &c., formerly known as ——, and now known as ——, and the site and course of which road-

Parties.

Consideration.

Vendor grants lands and right of way over other land, to purchaser in fee.

(*a*) The grantee of a right of way is under no obligation to repair the road; but if he wishes to use it, he must do so. Per Coleridge, J., in Duncan *v.* Louch, 14 L. J. Q. B. 187.

way is shown in the plan endorsed on these presents, and therein coloured ——: To HOLD the same unto and to the use of the said C. D. in fee simple: AND IT IS HEREBY declared that the right of way hereinbefore granted shall be used and enjoyed by the said C. D., his heirs and assigns, in common with the said A. B., his heirs and assigns, and the expense of keeping the said road in repair shall be borne by the said C. D., his heirs and assigns, and the said A. B., his heirs and assigns, in equal moieties (*a*).

OF FREEHOLDS AND RIGHT OF WAY OVER OTHER LAND.

IN WITNESS, &c.

No. CXXX.

CONVEYANCE *of a piece of* LAND *to* USE *that* VENDOR *may have a* RIGHT OF WAY *over it, and subject thereto to* USE *of* PURCHASER *in fee simple* (*b*).

CONVEYANCE WITH RESERVATION OF RIGHT OF WAY.

THIS INDENTURE, made the —— day of ——, BETWEEN A. B. of, &c. (*vendor*), of the one part, and C. D. of, &c. (*purchaser*), of the other part, WITNESSETH, that in consideration, &c. (*the receipt, &c.*), the said A. B., as beneficial owner, hereby conveys unto the said C. D. ALL that piece of land situate in the parish of ——, in the county of ——, being part of a field known as —— field, the whole of which field is delineated in the map drawn in the margin of these presents, the part thereof intended to be hereby conveyed being coloured pink on the said map, and the remainder thereof being coloured yellow on the said map: To HOLD the same unto the said C. D., in fee simple, To THE USE that the said A. B., his heirs and assigns, as owner or owners for the time being of the land coloured yellow in the said map, and his and their tenants and servants, shall for ever hereafter have a right of way with or without

Parties

Conveyance by vendor of land part of a field.

To use that vendor as owner of the remainder of the field may have right of way,

(*a*) It seems desirable to state in the deed who is to keep the road in repair. This will of course depend on the parties who are to use it, and on what may happen under the circumstances to be the most convenient arrangement.

(*b*) See section 62 of Conveyancing Act, 1881.

CONVEYANCE WITH RESERVATION OF RIGHT OF WAY.

and subject thereto to use of purchaser in fee.

horses, carts, and carriages, over the said land hereby conveyed by means of the road which traverses the said land, between the points marked A and B in the said map, he and they paying a fair proportion of the expense of keeping the said road in repair, and subject to the said right of way, To THE USE of the said C. D. in fee simple.

IN WITNESS, &c.

No. CXXXI.

OF FREEHOLDS TO PURCHASER WHO COVENANTS NOT TO BUILD, ETC.

CONVEYANCE *of* FREEHOLDS *to a* PURCHASER *who* COVENANTS NOT *to* BUILD *or to allow any* TREES *or* SHRUBS *to* EXCEED *a certain* HEIGHT.

Parties.

THIS INDENTURE, made the —— day of ——, BETWEEN A. B. of, &c. (*vendor*), of the one part, and C. D. of, &c. (*purchaser*), of the other part: WHEREAS the said A. B. hath agreed to sell the hereditaments hereinafter described to the said C. D. in consideration of the sum of £——, and of the said C. D. entering into the covenants hereinafter on his part contained: NOW THIS INDENTURE WITNESSETH, that in consideration of the sum of, &c. (*the receipt, &c.*), and in consideration of the covenants on the part of the said C. D. hereinafter contained, THE said A. B., as beneficial owner, hereby conveys unto the said C. D. ALL, &c., To HOLD the same unto and to the use of the said C. D. in fee simple: AND IN PURSUANCE of the aforesaid agreement in this behalf, the said C. D. to the intent that the burden of this covenant may run with the land hereby conveyed, and that the benefit thereof shall run with the land of the said A. B. adjoining to the land hereby conveyed, hereby covenants with the said A. B., his heirs and assigns, that the said C. D., his heirs or assigns, will not at any time hereafter erect or permit to be erected any building or wall (*a*) on the said piece or parcel of land hereby conveyed, or any part thereof, and will not at any time hereafter permit any trees or shrubs for

Agreement for sale.

Consideration.

Vendor conveys hereditaments to purchaser in fee.

Covenant by purchaser not to build on the land or to allow trees, &c., to grow beyond certain height.

(*a*) See Bowes *v.* Law, L. R. 9 Eq. 636.

the time being growing in or upon the said piece or parcel of land to exceed ten feet in height from the ground, having regard always to the present level of the said piece or parcel of land, and will at all times, by cutting the same or otherwise, prevent such trees and shrubs from exceeding the aforesaid height. OF FREEHOLDS TO PURCHASER, WHO COVENANTS NOT TO BUILD, ETC.

IN WITNESS, &c.

No. CXXXII.

CONVEYANCE *of a* PLOT *of* LAND, *part of a* BUILDING ESTATE. RESTRICTIVE COVENANTS *by* PURCHASER *as to* BUILDINGS *and otherwise* (*a*). OF PLOT OF LAND SUBJECT TO RESTRICTIVE COVENANTS.

THIS INDENTURE made the —— day of ——, BETWEEN A. B., of, &c. (*vendor*), of the one part, and C. D., of, &c. (*purchaser*), of the other part, WITNESSETH that in consideration, &c., the said A. B. as beneficial owner hereby conveys unto the said C. D. ALL that plot or parcel of land situate, &c., which, with the dimensions and abuttals thereof, is delineated and shown on the map drawn in the margin hereof and thereon coloured pink, which plot or parcel of land is part of a building estate known as the —— estate, TO HOLD the same unto and to the use of the said C. D. in fee simple: AND the said C. D. hereby covenants with the said A. B., his heirs and assigns, as owner or owners for the time being of the remainder of the said —— estate, of which the land hereby conveyed is part, that he the said C. D., his heirs and assigns, will not without the consent in writing of the said A. B., his heirs or assigns, erect upon the plot of land hereby conveyed any house or building which shall be nearer to the road in front of the same than is indicated by the line marked on the said map, "building line": AND ALSO (*insert any other restrictive covenants which may be agreed on*). [PROVIDED ALWAYS that if and whenever the said A. B., his heirs or assigns, shall sell a plot of land being a part but not the

Parties.

Conveyance by vendor to purchaser.

Restrictive covenants by purchaser.

Proviso that benefit of covenant shall not pass to

(*a*) See the observations on restrictive covenants at p. 200, *supra*.

OF PLOT OF LAND SUBJECT TO RESTRICTIVE COVENANTS.

whole of the said estate then remaining vested in him or them, the right to sue on the said covenants in respect of the plot of land so sold shall not pass to the purchaser unless it shall be declared in the deed of conveyance that it is intended to pass thereby (*a*)].

future purchasers of other plots, unless so declared in conveyance.

IN WITNESS, &c.

No. CXXXIII.

OF PLOT OF LAND SUBJECT TO RESTRICTIVE COVENANTS.

CONVEYANCE *of a* PLOT *of* LAND, *part of a* BUILDING ESTATE—MUTUAL COVENANTS *by* VENDOR *and* PURCHASER, *with respect to* BUILDING, &c., *on such* PLOT, *and on the* PLOTS SOLD *or intended to be sold to other purchasers.*

Parties.

THIS INDENTURE, made the —— day of ——, BETWEEN A. B. of, &c. (*vendor*), of the one part, and C. D. of, &c. (*purchaser*), of the other part, WITNESSETH that, in consideration, &c., the said A. B., as beneficial owner, hereby conveys unto the said C. D., ALL THAT plot or parcel of land situate in the parish of ——, in the county of ——, containing —— or thereabouts, which, with the dimensions and abuttals thereof, is delineated and shown on the map, drawn in the margin of these presents, and is thereon coloured pink, To HOLD the same unto and to the use of the said C. D. in fee simple. (*Acknowledgment by A. B. of right of C. D. to production of documents of title mentioned in schedule, and undertaking by him for safe custody thereof, suprà*, p. 226): AND WHEREAS the plot of land hereby granted is part of an estate of the said A. B., divided into plots for building purposes, some of which plots have been sold and the others are intended to be sold as and when purchasers can be found, and the said building estate is delineated on the said map, the plot of land hereby

Conveyance of plot of land to purchaser in fee.

Recital that land is part of building estate,

(*a*) This proviso is suggested, in order to prevent any question as to the devolution of the benefit of the covenants on purchasers of other plots. It would be manifestly inconvenient that the vendor should deprive himself of the right to release or dispense with the covenant.

granted being coloured pink thereon, and the remainder of the estate being coloured yellow thereon: And whereas all the said plots have been sold and are intended to be sold respectively, subject to the conditions and with the privileges specified in the schedule to these presents, and all the conveyances which have been hitherto executed by the said A. B. to purchasers have contained covenants similar to those hereinafter contained: And whereas the parties hereto have agreed to enter into the following covenants: Now it is hereby mutually covenanted and agreed, by and between the said parties, that all the conditions and privileges specified and set forth in the schedule hereto shall be for ever annexed as well to the plot of ground hereby conveyed as also to all other the plots of ground part of the said building estate shown on the said map, so far as the same are applicable thereto respectively, and shall be for ever hereafter respectively observed and enjoyed by the owners for the time being of the said plots respectively, and be mutually enforceable by and against the said owners respectively, and that all future conveyances to be executed by the said A. B. of the plots of ground not already sold and conveyed as aforesaid shall contain covenants for giving effect to the said conditions and privileges similar to those contained in these presents (*a*): And it is hereby declared that the foregoing covenants shall, both as regards the liability thereunder and the benefit thereof, run with the land, with reference to which they are entered into so far as legally can be, but that neither the said A. B., nor the said C. D., nor any present or future owner of any plot of land affected by such covenants shall be personally liable thereunder, after he has parted with the same plot of land.

of plot of land subject to restrictive covenants.

and that plots are sold subject to and with conditions and privileges.

Mutual covenants that conditions and privileges shall be annexed to all the plots.

But owner not to be personally liable after parting with land.

In witness, &c.

The Schedule above referred to.

(*a*) See the observations on restrictive covenants, *suprà*, p. 200.

No. CXXXIV.

DEED OF CONFIRMATION.

DEED *of* CONVEYANCE *of a* PIECE *of* LAND *which had been unintentionally omitted in the Deed conveying the* BULK *of the* PROPERTY (*by Indorsement on Principal Conveyance*).

Parties. THIS INDENTURE, made, &c., BETWEEN the within-named A. B. (*vendor*), of the one part, and the within-named C. D. (*purchaser*), of the other part:

Recite omission of land, and agreement to execute present assurance. WHEREAS, prior to the execution of the within-written indenture, the said A. B. agreed to sell to the said C. D. as well the hereditaments hereinafter described and assured, as also the hereditaments comprised in the said indenture, at the price of £——, but by an unintentional omission the hereditaments hereinafter described are not described or referred to in the said indenture, and for the purpose of rectifying and supplying such omission, the said A. B. hath agreed to execute this present deed:

Conveyance of land. NOW THIS INDENTURE WITNESSETH that, in pursuance of the aforesaid agreement, and in consideration of the premises, the said A. B., as beneficial owner, hereby conveys unto the said C. D. ALL, &c. (*parcels*): TO HOLD the same unto and to the use of the said C. D. in fee simple.

IN WITNESS, &c.

No. CXXXV.

RELEASE OF RENT-CHARGE TO OWNER OF LAND.

RELEASE *of* RENT-CHARGE *in fee, and* BUILDING *and other* COVENANTS, *to the* OWNER *in fee of the* FREEHOLDS *out of which the rent* IS PAYABLE.

Parties. THIS INDENTURE, made, &c., BETWEEN A. B. of, &c. (*vendor*), of the one part, and C. D. of, &c. (*purchaser*), of the other part

Recite (*Recite grant of land by A. B. to C. D. in fee sub-*

ject to the limitation to A. B. of a yearly rent-charge of £5, *and to covenants by C. D. as to building and otherwise, and that C. D. has erected a dwelling-house on the land, see supra*, p. 356) : AND WHEREAS the said C. D. has agreed to purchase from the said A. B. such release as is hereinafter expressed, at the price of £——: NOW THIS INDENTURE WITNESSETH, that in consideration, &c. (*the receipt, &c.*), the said A. B., as beneficial owner, hereby conveys and releases unto the said C. D., in fee simple, THE SAID yearly rent of £——, limited to the said A. B. in fee simple, by the hereinbefore recited indenture, and all powers and remedies for recovering the same when in arrear, and all covenants and conditions contained in the said indenture, and on the part of the said C. D., his heirs and assigns, to be observed and performed: TO THE END AND INTENT that the said yearly rent shall henceforth be merged and extinguished in the freehold and inheritance of the hereditaments comprised in the said indenture, and that the said covenants and conditions shall cease and determine.

RELEASE OF RENT-CHARGE TO OWNER OF LAND.

grant of land in fee subject to yearly rent-charge.

Agreement for release of yearly rent-charge.

Release of rent-charge to the owner in fee of land,

to the intent that same may merge in the inheritance.

IN WITNESS, &c.

No. CXXXVI.

SURRENDER *of a* LEASE *to the* LESSOR (*a*).

SURRENDER OF LEASE TO LESSOR.

THIS INDENTURE, made the —— day of ——, BETWEEN A. B. of, &c. (*lessee*), of the one part, and C. D. of, &c. (*lessor*),

Parties.

(*a*) By the 3rd section of the 8 & 9 Vict. c. 106, it is provided that an assignment of a chattel interest, not being copyhold, in any tenements or hereditaments, and a surrender in writing of an interest in any tenements or hereditaments, not being a copyhold interest, and not being an interest which might by law have been created without writing, shall be void *at law* unless made by deed. If such an assignment or surrender is made by writing under hand only for a valuable consideration, and the purchase-money is paid, though it would be void at law it will be effectual in passing the equitable and beneficial interest absolutely to the purchaser ; and if the

Assignments of chattel interests in land, and surrenders required to be in writing must be by deed to pass an interest at law.

SURRENDER OF LEASE TO LESSOR.

of the other part (*Recite lease for thirty years to A. B.*): AND WHEREAS the rent and covenants reserved by and contained in the hereinbefore recited indenture of lease, and on the part of the said lessee, to be paid, observed, and performed, have been duly paid, observed, and performed by the said A. B. up to the date of these presents: AND WHEREAS the said C. D. hath agreed to purchase from the said A. B. a surrender of the said premises at the price of £——: NOW THIS INDENTURE WITNESSETH, that in consideration, &c. (*the receipt, &c.*), the said A. B., as beneficial owner, hereby surrenders unto the said C. D. ALL the hereditaments and premises comprised in and demised by the said indenture of lease: TO THE INTENT that the residue of the said term of thirty years created by the said indenture of lease, and all other the estate and interest of the said A. B. in the said premises under or by virtue of the said indenture, may be merged and extinguished in the reversion and inheritance of the same premises.

Recite lease and that rent has been paid to present time.

Agreement to surrender lease to lessor.

Surrender of premises to lessor,

to the intent that residue of lease shall merge in the inheritance.

IN WITNESS, &c.

No. CXXXVII.

ASSIGNMENT OF GROWING CROPS.

ASSIGNMENT *of* GROWING CROPS *of* CORN *and* GRASS (*a*).

THIS INDENTURE, made, &c., BETWEEN A. B. of, &c. (*vendor*), of the one part, and C. D. of, &c. (*purchaser*), of the other part: WHEREAS the said A. B. hath agreed to sell to the said C. D. the crops of corn and grass now growing on the pieces of land hereinafter particularly described and specified, and all the benefit and advantage thereof, at the

Parties.

Contract for sale.

consideration money or any part of it is not paid, it would operate as an ordinary contract for sale. The section refers only to surrenders required to be in writing. Therefore surrenders which take effect by operation of law are not within the Act.

(*a*) This deed must be registered under the Bills of Sale Acts, so as to be good against a trustee in bankruptcy and execution creditors. 41 Vict. c. 31, s. 4.

price of £——: NOW THIS INDENTURE WITNESSETH, that in consideration, &c. (*the receipt, &c.*), the said A. B., as beneficial owner, hereby grants and assigns unto the said C. D.: ALL the crops of corn and grass which are now growing, arising, and being on the several pieces or parcels of land hereinafter described, namely (*here describe the lands specifically*): TOGETHER WITH FULL LIBERTY for the said C. D. and the servants, labourers, and other persons employed by him for that purpose, either with or without horses, carts, and carriages, from time to time, and at any time or times during the ensuing months of —— and ——, between the hours of —— in the morning and —— in the evening of each day, &c., of the said months respectively, excepting the Sundays which shall occur therein, to enter upon the said pieces or parcels of land respectively, or any part or parts thereof respectively, for the purpose of seeing the condition of the said crops, and for the purpose of reaping, mowing, and cutting the said crops of grass respectively, and removing the same respectively, and also to do all such other acts and things as may be necessary or required for the purpose of obtaining the full benefit of these presents: TO HOLD the same unto and to the use of the said C. D., absolutely.

ASSIGNMENT OF GROWING CROPS.

Assignment of crops,

with power to purchaser to enter on land to remove same.

To purchaser absolutely.

IN WITNESS, &c.

No. CXXXVIII.

ASSIGNMENT *of a* BOND DEBT (*a*) *by endorsement on the bond.*

ASSIGNMENT OF BOND DEBT.

THIS INDENTURE, made, &c., BETWEEN the within-named A. B. (*vendor*), of the one part, and C. D. of, &c. (*purchaser*), of the other part, WITNESSETH, that in consideration of the

Parties.

(*a*) Notice must be given of the assignment to the debtor, and from the date of such notice the assignment is effectual to pass the legal right to the bond and all legal remedies thereunder. A power of attorney is therefore unnecessary. See 36 & 37 Vict. c. 66, s. 25, sub-sect. 6.

ASSIGNMENT OF BOND DEBT.

sum of £800, as purchase-money, to the said A. B. paid by the said C. D. on or before the execution of these presents (the receipt whereof the said A. B. hereby acknowledges), the said A. B., as beneficial owner, hereby assigns unto the said C. D., THE principal sum of £1000 secured by the within-written bond, and the sum of £——, now due for arrears of interest thereon, and all interest henceforth to become due for the same, and also the said bond and the full benefit and advantage thereof: TO HOLD the same unto the said C. D., absolutely: AND the said A. B. hereby covenants with the said C. D., that the said principal sum of £1000 now remains owing on the said bond together with the sum of £——, for arrears of interest thereon.

Assignment of bond debt.

Covenant by vendor that bond debt remains due.

IN WITNESS, &c.

No. CXXXIX.

ASSIGNMENT *of a* JUDGMENT DEBT.

ASSIGNMENT OF JUDGMENT DEBT.

THIS INDENTURE, made, &c., BETWEEN A. B. of, &c., (*vendor*), of the one part, and C. D. of, &c. (*purchaser*), of the other part: WHEREAS the said A. B. on the —— day of ——, obtained a judgment in the High Court of Justice (Queen's Bench Division), against E. F. of, &c., for the sum of £——, and costs of suit: AND WHEREAS the said sum of £—— and costs of suit still remain due on the security of the said judgment: AND WHEREAS the said A. B. hath agreed to sell to the said C. D. the said judgment debt at the price of £——: NOW THIS INDENTURE WITNESSETH, that in consideration, &c. (*the receipt, &c.*), the said A. B. as beneficial owner, hereby assigns unto the said C. D., ALL THAT the said sum of £——, and also the said costs of suit secured by the said recited judgment, and all interest now due and hereafter to become due for the same: AND ALSO the said

Parties.

Recite judgment.

That debt is still owing.

Agreement for sale of debt.

Witnessing part.

Consideration.

Assignment of debt, &c.,

judgment, and the full benefit and advantage thereof, and of all other securities for the same sum, costs, and interest: To HOLD the same unto the said C. D., absolutely: AND the said A. B. hereby covenants with the said C. D. that the whole of the said sum of £—— remains owing on the said judgment.

ASSIGNMENT OF JUDGMENT DEBT.

and full benefit of judgment to purchaser.

IN WITNESS, &c.

No. CXL.

ASSIGNMENT *of* LETTERS PATENT.

ASSIGNMENT OF LETTERS PATENT.

THIS INDENTURE, made, &c., BETWEEN A. B. of, &c. (*vendor*), of the one part, and C. D. of, &c. (*purchaser*), of the other part: WHEREAS, by letters patent under the great seal of the United Kingdom of Great Britain and Ireland, dated the —— day of ——, in the —— year of the reign of Her Majesty Queen Victoria, and duly filed in Her Majesty's Court of Chancery, Her said Majesty granted unto the said A. B. the exclusive privilege of using, exercising, and vending a certain invention for the manufacture of (*here describe the invention*), for the term of —— years: AND WHEREAS in pursuance of a condition in the said letters patent contained, the said A. B. did, within the space of six calendar months after the date of the said letters patent, cause to be enrolled in Her Majesty's Court of Chancery in England, a particular description of the nature of the said invention by an instrument in writing under his hand and seal: AND WHEREAS the said A. B. hath agreed to sell to the said C. D. the said invention and letters patent, and also the full benefit and advantage thereof, and also of all letters patent to be hereafter obtained on account of the said invention, at the price of £——: NOW THIS INDENTURE WITNESSETH, that in consideration, &c. (*the receipt, &c.*), the said A. B. hereby grants, assigns, and confirms unto the said C. D., ALL THAT AND THOSE the said recited invention and letters patent,

Parties.

Recite grant of letters patent.

Enrolment of description of invention.

Agreement for sale of invention and letters patent.

Grant of invention and letters patent,

ASSIGNMENT OF LETTERS PATENT.

and also all the benefits, privileges, and advantages of, arising out of, or to be derived from the said invention and letters patent and also all other the letters patent to be hereafter obtained on account thereof: To HOLD the same unto the said C. D., absolutely, for all the remainder now to come and unexpired of the said term granted by the said letters patent, and of every other term and interest to be hereafter granted therein: AND THE said A. B. hereby covenants with the said C. D., THAT notwithstanding anything by him the said A. B. done or knowingly suffered to the contrary, the said letters patent are valid and effectual in the law for the purposes therein expressed: AND THAT the said A. B. now hath good right to grant and assign the said invention, letters patent, and premises unto the said C. D., his executors, administrators, and assigns, and that the same shall henceforth be used, exercised, and enjoyed by him and them, without any interruption, claim, or demand by or from the said A. B., or any person or persons lawfully or equitably claiming under him: AND ALSO THAT the said A. B., his executors and administrators, and all other persons claiming any right or interest to or in the said invention, letters patent, or premises from or under the said A. B., shall and will at all times hereafter, at the request and cost of the said C. D., his executors, administrators, or assigns, do, execute, and perfect, or cause to be done, executed, and perfected, all such acts, assurances, matters, and things for further and more effectually assuring the said invention, letters patent, and premises hereby granted and assigned, or expressed so to be, to and for the benefit of the said C. D., his executors, administrators, and assigns, and for enabling him and them, in the event of any infringement of the said invention, to commence, carry on, and prosecute all necessary and proper actions and proceedings on account thereof, as shall or may be reasonably required.

to purchaser absolutely.

Covenant by vendor that the letters patent are good,

and for right to assign,

and for further assurance.

IN WITNESS, &c.

No. CXLI.

GRANT *of an exclusive* LICENCE *to use a* PATENTED INVENTION *within a limited district, in consideration of a* ROYALTY. LICENCE TO USE A PATENT.

THIS INDENTURE, made the —— day of ——, BETWEEN A. B., of, &c. (*patentee*), of the one part, and C. D., of, &c. (*licensee*), of the other part: WHEREAS by letters patent under the Great Seal of the United Kingdom of Great Britain and Ireland, dated the —— day of ——, in the —— year of the reign of Her Majesty Queen Victoria, and duly filed in the High Court of Justice (Chancery Division), Her said Majesty granted unto the said A. B. the exclusive privilege of using, exercising, and vending a certain invention for the manufacture of (*here describe the invention*): AND WHEREAS, in pursuance of a condition in the said letters patent contained, the said A. B. did, within the space of six calendar months after the date of the same letters patent, cause to be enrolled in the said Court a particular description of the nature of the said invention by an instrument in writing under his hand and seal: AND WHEREAS the said A. B. hath agreed to grant to the said C. D. an exclusive licence to use the said invention within the county of ——, upon the terms hereinafter expressed: NOW THIS INDENTURE WITNESSETH, that in consideration of the reservations and covenants hereinafter contained, the said A. B., as beneficial owner, hereby grants unto the said C. D., the SOLE and EXCLUSIVE licence and authority to use and exercise the said invention, according to the specification thereof, within the county of ——: TO HOLD the same unto the said C. D., for all the remainder now unexpired of the term granted by the said letters patent: YIELDING AND PAYING to the said A. B., his executors, administrators, and assigns, on the first day of every month, the sum of ——, for every —— which shall have been made and constructed by the said C. D., his executors, administrators, or assigns, by virtue of the licence hereby granted during the month immediately preceding each such payment: AND in case the total amount of the said monthly payments shall in any

Parties.

Recite grant of letters patent.

Enrolment of specification.

Agreement for grant of licence.

Consideration.

Patentee grants licence to use and exercise invention within specified district,

at a royalty to be paid monthly for every article made under the licence.

And if the monthly

LICENCE TO USE A PATENT.

year ending on the 31st day of December fall short of £——, then YIELDING AND PAYING to the said A. B., his executors, administrators, and assigns, on the 31st day of December of every or any year in which such deficiency shall happen, such sum of money as, with the amount of the said monthly payments, will make up the sum of £——: AND the said C. D. hereby covenants with the said A. B., that the said C. D., his heirs, executors, administrators, or assigns, will pay the royalties and sums of money hereinbefore reserved and made payable at the times and in manner aforesaid: AND ALSO will at all times keep a correct and particular account of all —— made and constructed by him or them by virtue of this licence, and will at the end of every month furnish to the said A. B., his executors, administrators, or assigns, a true and correct list and particular of all —— made and constructed by him or them during the then preceding month, so as to show the amount of royalty payable under the foregoing reservation, and will also furnish to him or them all such information as shall be required in order to test the accuracy of the said list, and will (if required) verify the same by statutory declaration: AND ALSO will permit the said A. B., his executors, administrators, or assigns, to enter into and upon any place where the —— made and constructed under this licence shall for the time being be kept in order to inspect the same: PROVIDED ALWAYS, that if default shall be made in payment of any royalty or sum of money payable under the foregoing reservations for the space of fourteen days after the time hereby appointed for such payment, or if any breach shall be committed of the covenants hereinbefore contained (other than the said covenant for payment of the said royalties and sums of money), then and in either of such cases the said A. B., his executors, administrators, or assigns, may, by notice in writing given to the said C. D., his executors, administrators, or assigns, or one of them, or left for him or them at his, their, or one of their usual or last known place or places of abode in England or Wales, declare the licence hereby granted to be void, and the same shall be void accordingly; AND the said A. B. hereby covenants with the said C. D., that the said C. D., his executors, administrators, and assigns, paying the royalties and sums of money hereinbefore reserved, and observing and performing the covenants

royalties fall short of a specified annual sum, a further sum to make up the deficiency at the end of the year.

Covenants by licensee to pay royalties;

to keep accounts of articles constructed under licence;

to permit grantor to inspect stock.

Proviso for avoiding the licence on non-payment of royalty or breach of covenants.

Covenant by grantor for quiet enjoyment by licensee.

hereinbefore on his or their part contained, shall at all times during the residue of the said term peaceably and quietly hold, exercise, and enjoy the licence hereby granted, without any lawful interruption or disturbance by the said A. B., his executors, administrators, or assigns, or any other person; AND ALSO that the said A. B., his executors, administrators, or assigns, will not at any time during the said term exercise or use or authorise others to exercise or use the said invention within the county of——, without the consent in writing of the said C. D., his executors, administrators, or assigns, first had and obtained: AND if any infringement of the said patent privilege shall be committed or threatened by any person or persons within the said county, then, and in every such case the said A. B., his executors, administrators, or assigns, will, at the request and for the benefit of the said C. D., his executors, administrators, and assigns, take such proceedings against the person or persons so infringing or threatening to infringe the said patent privilege for the purpose of recovering damages, or for the purpose of restraining such infringement as shall or may be reasonably required, he the said C. D., his executors, administrators, or assigns, well and sufficiently indemnifying the said A. B., his executors, or administrators, from and against all costs, charges, and expenses attending or incidental to such proceedings as aforesaid: AND FURTHER, that if at any time or times hereafter, during the continuance of this licence, the said A. B. shall make or discover any improvement in the said invention, or in the using of the same, or which can or may be applied to the said invention, or shall become the owner of any such improvement, then and in every such case, and whether such improvement shall be the subject of letters patent or not, the said A. B. will communicate the same to the said C. D., his executors, administrators, or assigns, and the said C. D., his executors, administrators, or assigns, shall be entitled to use and practise such improvement within the said county, during the continuance of the licence hereby granted, without paying any further or other sum of money or acknowledgment in respect thereof.

LICENCE TO USE A PATENT.

Not to exercise patent privilege, or authorise others to do so within the district without the consent of licensee.

To take proceedings at request and for benefit of licensee against persons infringing patent privilege within the district.

Upon being indemnified by licensee against costs;

and that licensee shall be entitled to benefit of all improvements.

IN WITNESS, &c.

No. CXLII.

ASSIGNMENT OF GOODWILL.

ASSIGNMENT *of the* GOODWILL *and* PROPERTY *of a* BUSINESS.

Parties. THIS INDENTURE, made, &c., BETWEEN A. B., of, &c., (*vendor*), of the one part, and C. D., of, &c. (*purchaser*), of the other part: WHEREAS the said A. B. hath for some years past carried on the trade or business of ——, at No. ——, and the same trade or business is at the present time being carried on by him at the same place: AND WHEREAS the said A. B. hath agreed to sell to the said C. D. all his interest and goodwill in the said trade or business, and the debts, stock in trade, and effects intended to be hereby assigned, at the price of £——, and upon the terms hereinafter contained: AND WHEREAS the said A. B. has delivered to the said C. D. the books of account and other books relating to the said business, and in the said books are set forth the amounts and particulars of the debts respectively due and owing to and from the said A. B., and also the particulars of the contracts and engagements to which he is liable in respect of the said trade or business: NOW THIS INDENTURE WITNESSETH, that in consideration of the sum of £——, to the said A. B. paid by the said C. D. on or before the execution of these presents (*the receipt, &c.*), and also in consideration of the covenants hereinafter contained on the part of the said C. D., he the said A. B., as beneficial owner, hereby assigns unto the said C. D., ALL the beneficial interest and goodwill of the said A. B. in the said trade or business of ——, so carried on by him as aforesaid, and also all the book and other debts now due and owing to him on account of the said trade or business, and all securities for the same, and also all contracts and engagements, benefits, and advantages which have been entered into with the said A. B., or to which he is or can be entitled on account or in respect of the said trade or business, and also all the stock in trade, goods, fixtures, articles, and things which at the date of these presents belong to the said A. B. on account of the said trade or business, or are in anywise used in the same; TO HOLD the same unto the said

Recite that vendor has carried on business up to present time.

Agreement for sale of goodwill, &c.

Assignment of goodwill,

book and other debts due to the business,

and contracts,

and stock in trade, &c.,

C. D. absolutely: And the said A. B. hereby irrevocably appoints the said C. D. his attorney for him and in his name or otherwise to sue for, recover, and receive, and give effectual discharges for the debts hereby assigned: AND (in addition to the covenants for title implied by law) THE SAID A. B. hereby covenants with the said C. D. as follows, namely, THAT THE SAID A. B. will not at any time hereafter, either by himself, or in connection with any other person or persons, carry on the said trade or business of —— within —— miles of ——, and that the amount and particulars of the debts respectively due and owing to and from the said A. B. on account of the said trade or business, and the particulars of the contracts and engagements to which he is liable in respect of the said trade or business, are correctly stated and set forth in the books of account and other books so as aforesaid delivered by the said A. B. to the said C. D., and that the said A. B. will pay all the sums (if any) which may now be due and owing from the said trade or business in excess of the amount which, by the said books, appear to be so due and owing: AND ALSO that the said A. B. will, from time to time, and at all times hereafter, use his best endeavours to promote the said trade or business, and to give to the said C. D. the full advantage of the connection and custom of him the said A. B. in the said trade or business; AND THIS INDENTURE ALSO WITNESSETH, that in consideration of the premises, the said C. D. hereby covenants with the said A. B., THAT the said C. D. will, from time to time, and at all times hereafter, keep indemnified the said A. B., and his estate and effects, from and against the several sums of money which by the said books appear to be due and owing from the said A. B. in respect of the said trade or business, and also from and against the contracts and engagements to which by the said books, the said A. B. appears to be now liable, and also all interest, costs, expenses, losses, claims, and demands on account of the same debts, contracts, and engagements, respectively.

ASSIGNMENT OF GOODWILL.

to purchaser absolutely.

Covenants by vendor, that he will not carry on business within a specified distance;

that books are correct,

and that vendor will pay all sums exceeding the amount appearing due by the books;

and that he will use his personal influence.

Covenant by purchaser to indemnify vendor against debts due from the business, and from contracts and engagements.

IN WITNESS, &c.

No. CXLIII.

POLICY OF ASSURANCE.

ASSIGNMENT *of a* POLICY *of* LIFE ASSURANCE *to a* PURCHASER (*a*).

Parties.

THIS INDENTURE, made the —— day of ——, BETWEEN A. B. of, &c. (*vendor*), of the one part, and C. D. of, &c. (*purchaser*), of the other part:

Recite policy of assurance.

WHEREAS by a policy of assurance under the hands of three of the directors of the —— Assurance Society, dated the —— day of ——, and numbered ——, the sum of £1000 is assured to be paid to the executors, administrators, or assigns of the said A. B., within three calendar months after his decease, subject to the annual premium of £——:

Agreement for sale.

AND WHEREAS the said A. B. hath agreed to sell to the said C. D. the said policy of assurance, at the price of £——:

Witnessing part.

NOW THIS INDENTURE WITNESSETH, that, in consideration of the sum of £——, &c. (*the receipt, &c.*),

Consideration.

Assignment by vendor of policy and premises,

the said A. B., as beneficial owner, hereby assigns unto the said C. D.: ALL THAT the hereinbefore recited policy of assurance, and the said sum of £—— thereby assured, and all other moneys, benefits, and advantages to be had, recovered, or obtained under or by virtue of the said policy:

to hold to purchaser absolutely.

TO HOLD the same unto the said C. D. absolutely, subject to the conditions as to payment of the future premiums and otherwise to be henceforth observed in respect of the said policy.

IN WITNESS, &c.

Assignee of life policy may sue in his own name.

(*a*) By the 30 & 31 Vict. c. 144, persons or corporations entitled, or becoming entitled by assignment or other derivative title, to a policy of life assurance, are empowered to sue at law in the names of such persons or corporations to recover the policy moneys. The 3rd section provides that no assignment made after the passing of the Act shall confer on the assignee any right to sue for the policy moneys until a written notice of the date and purport of the assignment is given to the Assurance Company, at their principal place of business; and that the date on which such notice shall be received shall regulate the priority of all claims under any assignment. The 6th section prescribes the manner in which notices of assignment are to be acknowledged by the Assurance Company. See 31 Vict. c. 4, as to Marine Assurance.

No. CXLIV.

CONVEYANCE *of an* ADVOWSON (*a*).

ADVOWSON.

THIS INDENTURE, made the —— day of ——, BETWEEN A. B. of, &c. (*vendor*), of the one part, and C. D. of, &c. Parties.

(*a*) A vendor has no power to grant the next presentation during a vacancy (Baker *v.* Rogers, Cro. Eliz. 788), so that if a conveyance is executed of an advowson in fee during a vacancy, the immediately pending right of presentation would not pass to the purchaser. (Grey *v.* Hesketh, Ambler, 268; Greenwood *v.* Bishop of London, 5 Taunt. 727.) Grant of next presentation.

The owner of an advowson (including the purchaser of an estate for life in an advowson), being a clerk, may, on a vacancy, offer himself to the bishop, and the bishop cannot refuse him on that ground; but the grantee of the next presentation is precluded from so doing by 12 Anne, St. 2, c. 12; Walsh *v.* Bishop of Lincoln, L. R. 10 C. P. 518. Purchaser of advowson in fee.

The sale of an advowson or of a next presentation, the incumbent being *in extremis* at the time, is not invalid on that account. (Fox *v.* Bishop of Chester, 6 Bing. 1.) In Fox *v.* Bishop of Chester it was expressly found by the jury that the purchase was made without the privity of the clerk who was afterwards presented, and without any intention to present him. It must not, however, be assumed from this, that the privity of the clerk or the intention to present him vitiates a purchase where the incumbent is *in extremis*, and not in other cases. When the clerk is privy to the contract in this sense, that it is part of the arrangement that he shall be presented, the transaction is simoniacal and void, whether the incumbent is *in extremis* or not. On the other hand, the mere intention on the part of a purchaser to present a particular person, provided that he is under no obligation to do so, does not, it is conceived, vitiate the purchase in either case. Sale of advowson where incumbent is *in extremis*.

If an advowson is vested in a trustee or mortgagee, the *cestui que trust* or mortgagor is entitled to nominate, and may compel the trustee or mortgagee to present his nominee. (Hill, p. 446; Coote, 202.) Power of nomination when advowson is vested in trustee, &c.

If the owner in fee of an advowson dies during a vacancy, the next presentation goes to his personal representatives. (Mirehouse *v.* Rennell, 8 Bing. 490.) If the owner in fee is also incumbent, the advowson on his death descends to his heir. (Tud. R. P. 214.) Owner in fee dying during vacancy.

Where the owner or *cestui que trust* of an advowson is a bankrupt, the right of nomination may be exercised by him in respect of any vacancy occurring before the sale of the advowson or next presentation (Hill, 449); and in the absence of a settlement, a husband during the coverture has the right of nomination in respect of an advowson vested in his wife, and after her death, in case there were issue of the marriage and the husband survives, he will be entitled to present as tenant by the curtesy. (Hill, 450; 3 Cru. Dig. 14; Tud. R. P. 214.) When the advowson is separate estate of the wife her husband as such can acquire no right of nomination except in the event of there having been issue of the marriage, and the wife dying without having disposed of the advowson in her life or by her will. If a widow is entitled to dower in respect of an advowson, the heir has the first two presentations and the widow the third. Bankrupt. Right of husband as tenant by curtesy. Right of widow.

If a right of presentation is vested in joint tenants or tenants in common they must concur in the presentation, in order to make it binding on the Joint tenants and

ADVOWSON.

Vendor grants advowson to purchaser.

(*purchaser*), of the other part: WITNESSETH, that in consideration, &c. (*the receipt whereof, &c.*), the said A. B., as beneficial owner, hereby conveys unto the said C. D., ALL THAT the advowson and perpetual right of presentation of and to the rectory or parish church of ——, in the county of ——: To HOLD the same unto and to the use of the said C. D., in fee simple.

IN WITNESS, &c.

No. CXLV.

NEXT PRESENTATION.

CONVEYANCE *of the next* PRESENTATION *to a* RECTORY.

Parties.

THIS INDENTURE, made the —— day of ——, BETWEEN A. B., of, &c. (*vendor*), of the one part, and C. D., of, &c. (*purchaser*), of the other part: WHEREAS the said A. B. hath

Agreement for sale of next presentation.

agreed to sell to the said C. D. the next presentation intended to be hereby conveyed at the price of £——: AND WHEREAS, in order to save expense, it was agreed upon the treaty for the said purchase that the said C. D. should accept the

tenants in common.

ordinary. If they present severally, the ordinary may admit either of the presentees or refuse all, and if no joint presentation is made within the six months he can present by lapse. (Co. Lit. 186 *a*.)

Coparceners.

In the case of coparceners, the eldest may present on the first turn, and this right passes to her issue or to her assign. (Co. Lit. 186 *a*.)

Tenants in common when they cannot agree.

Where an advowson is vested in trustees in trust for tenants in common and the beneficiaries cannot agree as to the nomination, the Court will direct them to draw lots. (Johnstone *v.* Baker, 9 De G. M. & G. 439.) And it is conceived that the same course would be adopted in the case of joint tenants. In the case of coparceners, equity would follow the law and allow the eldest to nominate.

Infant.

An infant, and not his guardian, is entitled to present to a church. (Heale *v.* Greenbank, 3 Atk. 710.)

Trustees.

If the right of nomination is vested in trustees, they cannot vote by proxy; and unless they have been incorporated by charter, they must all join in the presentation, if there is no clause authorising a majority to bind the rest. (Hill, 451.)

Parishioners, &c.

Where an advowson is vested in the parishioners or inhabitants of a place, or in trustees for them, the majority of the parishioners or inhabitants may appoint. (Fearon *v.* Webb, 14 Ves. 13.)

Resignation of benefices.

As to engagements to resign benefices in favour of other persons, see 9 Geo. 4, c. 94, ss. 1, 2, 3, 4, 5, 6.

title of the said A. B. without investigation, and that in consideration thereof the said A. B. should enter into an absolute covenant for title: NOW THIS INDENTURE WITNESSETH, that in pursuance of the said agreement, and in consideration, &c. (*the receipt whereof, &c.*): THE said A. B. hereby conveys unto the said C. D., THE NEXT PRESENTATION of and to the rectory or parish church of ——, in the county of ——, when the same shall become void by the death, resignation, or deprivation of ——, the present incumbent thereof, or otherwise howsoever: TO HOLD the same unto the said C. D., absolutely: AND the said A. B. hereby covenants with the said C. D. that he the said A. B. has good right to convey the said next presentation, and that the said C. D., his executors, administrators, or assigns, shall present, by virtue of this conveyance, without any interruption from any person whomsoever: AND ALSO that the said A. B. and his heirs and all other persons (if any) interested in the advowson of the said rectory will at all times hereafter, at the request and consent of the said C. D., his executors, administrators, or assigns, make, do, and execute such acts, deeds, and things for further and more effectually assuring the said next presentation unto him or them as he or they may require.

NEXT PRESENTATION.

Considération.

Vendor grants next presentation

to purchaser.

Absolute covenant for title.

IN WITNESS, &c.

No. CXLVI.

CONVEYANCE *of an* ADVOWSON *and an* ANNUITY *until the* BENEFICE *becomes* VACANT (*a*).

GRANT OF ADVOWSON AND ANNUITY UNTIL VACANCY.

THIS INDENTURE, made the —— day of ——, BETWEEN A. B., of, &c. (*vendor*), of the one part, and C. D., of, &c. (*purchaser*), of the other part: WHEREAS the said A. B. has agreed to sell to the said C. D. the advowson of the rectory or

Parties.

Recite agreement for sale.

(*a*) See *suprà*, p. 108, note.

GRANT OF ADVOWSON AND ANNUITY UNTIL VACANCY.

parish church of ——, intended to be hereby conveyed, and an annuity of £80 to be paid to the said C. D., his executors, administrators, or assigns, until the benefice shall become vacant, and to be secured by the bond of the said A. B., at the price of £2000: AND WHEREAS in part pursuance of the said agreement, the said A. B. has given and executed to the said C. D. his bond bearing even date with these presents, in the penal sum of £2000, subject to a condition thereunder written for making void the same, if the said A. B., his heirs, executors, or administrators shall pay to the said C. D., his executors, administrators, and assigns, the annual sum of £80 until the said benefice shall become vacant, by equal half-yearly payments, on the —— day of —— and the —— day of —— in every year, the first of such half-yearly payments to be made on the —— day of —— next: NOW THIS INDENTURE WITNESSETH, that in further pursuance of the said agreement, and in consideration, &c. (*Conveyance of advowson to C. D., as in Precedent No. CXLIV., suprà*, p. 427.)

Bond of vendor to purchaser to secure annuity until benefice becomes vacant.

Conveyance of advowson.

IN WITNESS, &c.

No. CXLVII.

MERGER *of* RENT-CHARGES *in lieu of* TITHES (*a*).

MERGER OF RENT-CHARGE.

TO ALL TO WHOM THESE PRESENTS SHALL COME, WE, A. B., of, &c., and C. D., of, &c. (*proprietors of lands*), send

Parties.

Merger of tithe rent-charges.

(*a*) Under the 6 & 7 Wm. 4, c. 71, and the 1 & 2 Vict. c. 64, ss. 1 & 3, a tenant in fee or in tail in possession of tithes, or commutation rent-charge in lieu of tithe, or any person having power to acquire a fee simple therein, or the tenant for life in possession of both lands and tithes, can, by deed to be approved by the commissioners and confirmed under their seal, merge the tithes, or commutation rent-charge, in the land out of or in respect of which they issue.

By the 1st section of 2 & 3 Vict. c. 62, all charges on tithes which are merged under the Acts, are to have priority over any charges on the lands at the time of the merger.

The 6th section of 2 & 3 Vict. c. 62 authorises the merger of the tithes of glebe land, where the glebe and the tithes belong to the same person in virtue of his benefice; and under the 19th section of 9 & 10 Vict. c. 73, all powers relating to the merger of tithes or rent-charge instead thereof, may be executed by any person entitled in equity to the same, but so that all the

greeting: WHEREAS, by an award made in pursuance of the Act for the Commutation of Tithes in England and Wales, and duly confirmed on the —— day of ——, the tithes of the parish of L., in the county of ——, were commuted, and a rent-charge of the annual sum of £5 was awarded to be paid to ——, of the parish of ——, in the said county of ——, yeoman, his heirs or assigns, or to the persons entitled in remainder or reversion after him, instead of the impropriate tithes arising from certain lands of the said parish of L., of the estimated quantity, in statute measure, of 15A. 1R. 16P.: AND WHEREAS, by the instrument of apportionment of the rent-charge awarded to be paid in lieu of the tithes of the said parish of L., and also duly confirmed on the —— day of ——, the said rent-charge of £5 has been charged upon the lands particularly described in the said apportionment, and on the plan thereto annexed numbered respectively 1481, 1487, 1486, 1555, 1558, 1559, and 1570: AND WHEREAS the said A. B. is seised for an estate in possession in fee simple of so much of the said rent-charge of £5 as was awarded in lieu of the tithes arising from the said lands numbered 1481, 1487, and 1486 respectively, and is seised in fee according to the custom of the manor of L., in the county of ——, of the same lands: AND WHEREAS the said C. D. is seised for an estate in possession in fee simple of the said lands numbered 1555, 1558, 1559, and 1570 respectively, and is also seised for an estate in fee simple in possession of so much of the said rent-charge of £5 as was awarded in lieu of the tithes arising from the last-mentioned lands: NOW THEREFORE we the said A. B. and C. D., according to our respective rights and interests therein, do hereby respectively declare it to be our will and intent, THAT THE SAID RENT-CHARGE of £5 shall henceforth be absolutely merged and extinguished in the freehold and inheritance of the lands in respect of which the said rent-charge was heretofore payable, and upon which it has been charged as aforesaid in and by the said instrument of apportionment. IN TESTIMONY whereof we have hereunto subscribed our names and affixed our seals, this —— day of ——, ——.

MERGER OF RENT-CHARGE.

Recite award.

Seisin of lands by the different proprietors.

Merger by proprietors of rent-charge.

charges on the tithes shall be prior and primary charges on the lands and the owners thereof for the time being.

To remove all doubts on the subject, it is enacted by the 1 & 2 Vict. c. 64, s. 4, that the provisions of the Acts in relation to merger, shall extend to copyholds.

No. CXLVIII.

SHARE IN RESIDUARY PERSONALTY.

ASSIGNMENT *of a* SHARE *in* RESIDUARY PERSONAL ESTATE *derived under a* WILL (*a*).

Parties.

THIS INDENTURE, made the —— day of ——, BETWEEN A. B., of, &c. (*vendor*), of the one part, and C. D., of, &c., and E. F., of, &c. (*purchasers*), of the other part: WHEREAS G. H., late of, &c., duly made his will, dated the —— day of ——, and thereby, &c. (*recite residuary bequest under which vendor takes a moiety, and death of testator and probate of will*): AND WHEREAS the said C. D. and E. F. have agreed with the said A. B. for the absolute purchase of his share, of and in the residuary personal estate of the said testator at the price of £——: NOW THIS INDENTURE WITNESSETH, that in consideration of the sum of £—— to the said A. B. paid by the said C. D. and E. F. in equal shares (*the receipt whereof, &c.*), the said A. B., as beneficial owner, hereby assigns unto the said C. D. and E. F., ALL THAT the moiety or other the part or share of him the said A. B. under the said will of and in the residuary personal estate of the said testator, and the stocks, funds, and securities of which the same may consist, or by which the same respectively may be represented: TO HOLD THE SAME unto the said C. D. and E. F. absolutely, as tenants in common.

Testamentary gift of residuary estate.

Agreement for purchase of vendor's moiety.

Consideration.

Vendor assigns his moiety of residuary estate to purchasers.

IN WITNESS, &c.

No. CXLIX.

LIFE INTEREST IN STOCK.

ASSIGNMENT *of a* LIFE INTEREST *in* STOCK.

Parties.

THIS INDENTURE, made the —— day of ——, BETWEEN A. B., of, &c. (*vendor*), of the one part, and C. D., of, &c. (*purchaser*), of the other part: WHEREAS by an indenture dated the —— day of ——, and made between (*parties*), it was declared

Recite settlement of stock,

(*a*) If the vendor is a married woman who has married since the 31st of December, 1882, she will be described as "A. B., the wife of H. B., of, &c., to whom she was married since the 31st day of December, 1882." In other respects the assignment will be in the same form as No. CXLVIII., substituting "she" for "he," and "her" for "him," when necessary. See *suprà*, p. 187.

and agreed that E. F. and G. H., their executors and administrators, should stand possessed of the sum of £250, £3 per cent. Consolidated Annuities, transferred into their names as therein mentioned, upon trust to pay to the said A. B. and his assigns the dividends and annual produce thereof for his life, and after his decease, upon trust as therein mentioned: AND WHEREAS the said A. B. hath agreed to sell to the said C. D. his life interest in the said sum of £250, Consolidated £3 per cent. Annuities, at the price of £——: NOW THIS INDENTURE WITNESSETH, that in consideration, &c. (*the receipt, &c.*) the said A. B., as beneficial owner, hereby assigns unto the said C. D., ALL the dividends and annual produce to accrue and become payable during the life of the said A. B., from or in respect of the said sum of £250 £3 per cent. Consolidated Annuities, now standing in the names of the said E. F. and G. H., as hereinbefore mentioned: To HOLD the same unto the said C. D., absolutely.

LIFE INTEREST IN STOCK.

for vendor for life.

Agreement for sale of life interest.

Witnessing part.

Assignment by vendor of life interest in stock,

to purchaser.

IN WITNESS, &c.

No. CL.

ASSIGNMENT *by a* MARRIED WOMAN, *married before the 1st of January*, 1883, *of her* REVERSIONARY INTEREST *in* PERSONALTY *under a* WILL *made after the 31st of December*, 1857 (*a*).

RELEASE BY A MARRIED WOMAN OF REVERSIONARY PERSONALTY.

THIS INDENTURE, made, &c., BETWEEN A. B., of, &c., and C., his wife (*vendors*), of the one part, and E. F., of, &c. (*purchaser*), of the other part: WHEREAS G. H., late of ——, &c., deceased, duly made his will, dated the —— day of ——, 1860, and thereby, among other things, he bequeathed the sum of £10,000 to his trustees therein named, upon trust to invest the same and vary the investments as therein mentioned, and to pay the annual income of the said trust moneys, stocks,

Parties.

Will bequeathing legacy to tenant for life.

(*a*) This deed must be acknowledged by the married woman. See 20 & 21 Vict. c. 57.

RELEASE BY A MARRIED WOMAN OF REVERSIONARY PERSONALTY.

funds, and securities unto L. M., and his assigns, for his life, and from and after his decease, the said testator declared that the said trust moneys, stocks, funds, and securities, and the annual income thereof, should be divided between all the children of the said L. M. who should attain the age of twenty-one years in equal shares (*Death of G. H., and probate of his will*): AND WHEREAS the said L. M. has six children of whom the said C. B. is one, and the said C. B. and two others of the said children have attained the age of twenty-one years, and the three others are under that age and unmarried: AND WHEREAS the said A. B. and C. his wife have agreed to sell to the said E. F. the reversionary share and interest of the said C. B. in the said sum of £10,000 so bequeathed as aforesaid, and the investments representing the same, at the price of £——: NOW THIS INDENTURE WITNESSETH, that in consideration, &c. (*the receipt, &c.*), the said A. B. and C., his wife, as beneficial owners, hereby assign unto the said E. F., ALL the share and interest, or shares and interests, as well vested as contingent, and as well original as accruing, expectant on the decease of the said L. M., to which the said C. B. or the said A. B. in her right is now or shall or may hereafter be entitled under the said recited will of the said G. H., deceased, of and in the said sum of £10,000 so bequeathed as aforesaid, and the investments representing the same, and the annual income thereof: TO HOLD the same unto the said E. F., absolutely.

Remainder to his children attaining twenty-one.

Vendor one of such children has attained twenty-one.

Agreement by vendor for sale of her expectant interest in legacy.

Assignment by vendor with concurrence of her husband,

of share of legacy expectant on decease of her father,

to purchaser absolutely.

IN WITNESS, &c.

No. CLI.

CONVEYANCE *to a* MARRIED WOMAN, *the* PURCHASE *being made out of the* SAVINGS *from* BUSINESS *carried on by her* SEPARATELY *under a* PROTECTION ORDER.

WHEN MARRIED WOMAN PURCHASES WITH SAVINGS OF BUSINESS CARRIED ON UNDER PROTECTION ORDER.

THIS INDENTURE, made the —— day of ——, BETWEEN A. B., of, &c. (*vendor*), of the one part, and C. D., of, &c., the wife of X. D., but living separate from him under the Protection

Parties.

WHEN MARRIED WOMAN PURCHASES WITH SAVINGS OF BUSINESS CARRIED ON UNDER PROTECTION ORDER.

Order hereinafter recited, of the other part: WHEREAS, by an order dated the —— day of ——, 18—, made at a Petty Sessions of the Peace holden for the Petty Sessional Division of D——, in the county of G——, at the town-hall, D——, in the said county, before ——, four of Her Majesty's Justices of the Peace in and for the said county, and acting for the said division, and under the hands and seals of the said justices, After reciting that the said C. D., the wife of X. D., complained to them the said justices in petty sessions assembled, that the said X. D. had deserted her, and she prayed that they might make an order to protect any money or property she might acquire by her own lawful industry, and property she might become possessed of after such desertion, against her said husband or his creditors, or any person claiming under him, And that it being then proved before them the said justices upon oath and otherwise, that on the —— day of ——, 18—, at the parish church of W——, in the said county of G——, the said C. D. had been duly married to the said X. D., and that afterwards on or about the —— day of ——, 18—, the said X. D. without reasonable cause had deserted her, and that she was then maintaining herself by her own industry, They the said justices being satisfied of the truth of the facts so proved before them as aforesaid, did thereby in pursuance of the statute in such case made and provided order that the earnings and property of the said C. D., acquired or to be acquired by her since the commencement of such desertion as aforesaid, should thereafter be protected from the said X. D. her husband, and from all creditors and persons claiming, or who might thereafter claim under him, and that all such earnings and property should belong, and should be deemed to belong, to the said C. D. as if she were a *feme sole*: AND WHEREAS, the said order was entered with the registrar of the county court of G——, holden at D——, on the —— day of ——, 18—: AND WHEREAS the said C. D. has agreed with the said A. B. for the absolute purchase of the hereditaments hereinafter described, for the sum of £——: NOW THIS INDENTURE WITNESSETH, that in pursuance of the said agreement, and in consideration of the sum of £—— paid to the said A. B. by the said C. D. out of earnings and property acquired by her since the commencement of her desertion by her said husband, as she doth hereby declare (*the receipt, &c.*),

Recite order made by justices at Petty Sessions.

that earnings and property acquired by married woman after desertion should belong to her as *feme sole*.

Order entered with Registrar.

Agreement by married woman for purchase.

Consideration.

Conveyance to wife for her separate use.

WHEN MARRIED WOMAN PURCHASES WITH SAVINGS OF BUSINESS CARRIED ON UNDER PROTECTION ORDER.

the said A. B., as beneficial owner, hereby conveys unto the said C. D., ALL, &c. (*parcels*), TO HOLD the same unto and to the use of the said C. D. in fee simple for her separate use.

IN WITNESS, &c.

No. CLII.

ENLARGEMENT OF TERM INTO FEE SIMPLE BY ABSOLUTE OWNER.

DEED *to* CONVERT *a* LONG TERM *of* YEARS *into a* FEE SIMPLE *by a person* ABSOLUTELY ENTITLED *thereto* (*a*).

TO ALL TO WHOM THESE PRESENTS SHALL COME, A. B., of, &c., sends greeting: WHEREAS by an indenture dated, &c., and made between X. Y., of the one part, and the said A. B.,

Recite demise for long term subject to nominal rent and covenants as to user.

(*a*) As to terms of years which as originally created were for not less than 300 years, and of which 200 years remain unexpired, the 65th section of the Conveyancing Act, 1881, empowers any person beneficially entitled in right of such a term to possession of the land therein comprised,—whether such person is clothed with the legal estate or not, and whether his interest is absolute or only limited, and whether the term is subject to any incumbrances or covenants or not, and notwithstanding any reservation of rent which has no money value,—by a declaration by *deed* to enlarge the term into a fee simple in the person in whom such term may then be vested, provided that the estate in fee simple so acquired by enlargement, shall be subject to such trusts, powers, executory limitations over rights and equities, covenants and provisions as to user or enjoyment, and other obligations as the term would have been subject to if it had not been so enlarged. The section is as follows :—

Provisions of Act for enabling a long term to be enlarged into a fee simple.

"(1.) Where a residue unexpired of not less than 200 years of a term, which, as originally created, was for not less than 300 years, is subsisting in land, whether being the whole land originally comprised in the term, or part only thereof, without any trust or right of redemption affecting the term in favour of the freeholder, or other person entitled in reversion expectant on the term, and without any rent, or with merely a peppercorn rent or other rent having no money value, incident to the reversion, or having had a rent, not being merely a peppercorn rent or other rent having no money value, originally so incident, which subsequently has been released, or has become barred by lapse of time, or has in any other way ceased to be payable, then the term may be enlarged into a fee simple in the manner, and subject to the restrictions, in this section provided.

(2.) Each of the following persons (namely) :

(i.) Any person beneficially entitled in right of the term, whether subject to any incumbrance or not, to possession of any land comprised in the term ; but, in case of a married woman, with the concurrence of her husband, unless she is entitled for her separate

of the other part, for the consideration therein mentioned, a messuage or dwelling house and other hereditaments situate ——, were demised by the said X. Y. unto the said A. B. for the term of 10,000 years thence next ensuing at a peppercorn rent, and subject to the lessee's covenants as to user and enjoyment of the premises as therein contained, but the said indenture contains no clause or provision whereby the said term can be

ENLARGEMENT OF TERM INTO FEE SIMPLE BY ABSOLUTE OWNER.

use, whether with restraint on anticipation or not, and then without his concurrence ;

(ii.) Any person being in receipt of income as trustee, in right of the term, or having the term vested in him in trust for sale, whether subject to any incumbrance or not ;

(iii.) Any person in whom, as personal representative of any deceased person, the term is vested, whether subject to any incumbrance or not ;

shall, as far as regards the land to which he is entitled, or in which he is interested, in right of the term, in any such character as aforesaid, have power by deed to declare to the effect that, from and after the execution of the deed, the term shall be enlarged into a fee simple.

"(3.) Thereupon, by virtue of the deed and of this Act, the term shall become and be enlarged accordingly, and the person in whom the term was previously vested shall acquire and have in the land a fee simple instead of the term.

"(4.) The estate in fee simple so acquired by enlargement shall be subject to the same trusts, powers, executory limitations over, rights and equities, and to all the same covenants and provisions relating to user and enjoyment, and to all the same obligations of every kind, as the term would have been subject to if it had not been so enlarged.

"(5.) But where any land so held for the residue of a term has been settled in trust by reference to other land, being freehold land, so as to go along with that other land as far as the law permits, and, at the time of enlargement, the ultimate beneficial interest in the term, whether subject to any subsisting particular estate or not, has not become absolutely and indefeasibly vested in any person, then the estate in fee simple acquired as aforesaid shall, without prejudice to any conveyance for value previously made by a person having a contingent or defeasible interest in the term, be liable to be, and shall be conveyed and settled in like manner as the other land, being freehold land, aforesaid, and until so conveyed and settled shall devolve beneficially as if it had been so conveyed and settled.

"(6.) The estate in fee simple so acquired shall, whether the term was originally created without impeachment of waste or not, include the fee simple in all mines and minerals which at the time of enlargement have not been severed in right, or in fact, or have not been severed or reserved by an inclosure Act or award.

"(7.) This section applies to every such term as aforesaid subsisting at or after the commencement of this Act."

The 11th section of the Conveyancing Act, 1882, provides that section 65 of the Act of 1881 shall apply to and include, and shall be deemed to have always applied to and included, every such term as in that section is mentioned, whether having as the immediate reversion thereon the freehold or not, but not to any term liable to be determined by re-entry for condition broken, or any term created by subdemise out of a superior term itself incapable of being enlarged into a fee simple.

The Act not to apply where term may be determined for condition broken.

In illustration of the first exception, if the property is held for a term of which 200 years at least remains unexpired, at a nominal rent, but the term

ENLARGEMENT OF TERM INTO FEE SIMPLE BY ABSOLUTE OWNER.

determined by re-entry for condition broken: Now THE said A. B., by virtue of the Conveyancing and Law of Property Act, 1881, section 65, hereby declares that the said term of 10,000 years as to all the premises therein comprised shall henceforth be enlarged into a fee simple.

Enlargement by owner of term into fee simple.

IN WITNESS, &c.

No. CLIII.

ENLARGEMENT OF TERM BY EXECUTORS.

DEED *by* EXECUTORS *to* CONVERT *a* LONG TERM *of* YEARS *into a* FEE SIMPLE.

TO ALL TO WHOM THESE PRESENTS SHALL COME, A. B., of, &c., and C. D., of, &c., SEND GREETING: WHEREAS G. H., late of, &c., duly made his will, dated, &c., and thereby (*inter alia*) he appointed the said A. B. and C. D. executors of his said will. (*Death of the said G. H. and probate of his will.*) AND WHEREAS the said testator at the time of his death was possessed of a messuage or dwelling-house and premises situate at ——, and known by the name of —— for the unexpired residue of a term of 999 years under an indenture of lease dated the —— day of ——, and made between, &c.: AND WHEREAS the said messuage or dwelling-house and premises are held under the said indenture of lease at a peppercorn rent, and such indenture contains no clause or provision whereby the said term can be determined by re-entry for condition broken: Now THE SAID A. B. and C. D. by virtue of the Conveyancing and

Recite will appointing executors.

That testator at his death was entitled to leaseholds held for long term.

Declarations by executor that term

is liable to be determined by re-entry according to the terms of the document creating the term for breach of the lessee's covenants or otherwise, such a term could not be enlarged into a fee simple, although the rent is only nominal.

In illustration of the second exception, if a 500 years' term, held at a peppercorn rent, and not liable to be determined by re-entry for condition broken, were subdemised for 400 years at a rent of no money value, the subtenant could enlarge the 500 years' term into a fee simple, provided 200 years of the sub-term remained unexpired; but he could not do this if the superior term were held at a beneficial rent, or subject to covenants in respect of which the reversioner might enter for condition broken.

Law of Property Act, 1881, section 65, hereby declares that the said term of 999 years as to all the premises therein comprised shall henceforth be enlarged into a fee simple.

ENLARGEMENT OF TERM BY EXECUTORS.

shall be enlarged into a fee simple.

In witness, &c.

No. CLIV.

DEED *to* Convert *a* Long term *of* Years *into a* Fee simple *by a* Mortgagee *who has become* Absolute Owner *by* Adverse Possession.

ENLARGEMENT OF TERM BY MORTGAGEE WHO HAS BECOME ABSOLUTE OWNER INTO FEE SIMPLE.

TO ALL TO WHOM THESE PRESENTS SHALL COME, A. B., of, &c., sends greeting: Whereas, by an indenture dated, &c., and made between L. M., of the one part, and the said A. B., of the other part, the lands and hereditaments situate in the parish of ——, in the county of ——, therein particularly described, were demised by the said L. M. unto the said A. B., his executors, administrators, and assigns, for the term of 500 years thence next ensuing without impeachment of waste by way of mortgage for securing the payment by the said L. M. unto the said A. B. of the sum of £400 and interest as therein recited: And whereas no part of the said mortgage debt of £400 having been paid, the said A. B. entered into possession of the said premises in the year ——, and has ever since remained in uninterrupted possession and enjoyment thereof, without having in any respect acknowledged the title of the said L. M., or of his right of redemption, and has consequently become the absolute owner of the premises for all the now unexpired residue of the said term of 500 years: NOW the said A. B., by virtue of the Conveyancing and Law of Property Act, 1881, section 65, hereby declares that the said term of 500 years as to all the premises therein comprised, shall henceforth be enlarged into a fee simple.

Recite mortgage for long term.

that mortgage debt was not paid,

and that mortgagee took possession and acquired absolute title to term by adverse possession.

Enlargement of the said term by mortgagee who has become absolute owner into a fee simple.

In witness, &c.

No. CLV.

ENLARGEMENT OF TERM BY MARRIED WOMAN HAVING EQUITABLE ESTATE FOR LIFE FOR SEPARATE USE, &c.

DEED *to* CONVERT *a* LONG TERM *of* YEARS *into a* FEE SIMPLE *by a* MARRIED WOMAN *having an* EQUITABLE ESTATE *for* LIFE *for her* SEPARATE USE WITHOUT POWER *of* ANTICIPATION (*a*).

Recite deed whereby parcels were demised for 700 years.

TO ALL TO WHOM THESE PRESENTS SHALL COME, A. B., the wife of C. B., of, &c., SENDS GREETING: WHEREAS, by an indenture dated the —— day of ——, and made between, &c. (*parties*), ALL that, &c. (*parcels*), were demised unto L. M. for the term of 700 years thence next ensuing at a peppercorn rent, and the said indenture contains no clause or provision whereby the said term can be determined by re-entry for condition broken: AND WHEREAS N. O., late of, &c,, having become entitled to the said premises for the unexpired residue of the said term, duly made his will dated the —— day of ——, 18—, and thereby gave all his real and personal estate to P. Q. and R. S. upon trust for the testator's daughter, the said A. B., during her life, for her separate use without power of anticipation, and after her death in trust for the children of the said A. B., as therein mentioned, and the said testator appointed the said P. Q. and R. S. executors of his said will (*recite death of testator and probate of the will*): NOW the said A. B., by virtue of the Conveyancing and Law of Property Act, 1881, sect. 65, hereby declares that the said term of 700 years as to all the premises therein comprised, shall henceforth be enlarged into a fee simple.

Will by owner of term of all his property to trustees for daughter for life for separate use without power of anticipation.

Enlargement by married woman entitled as above of the said term into fee simple.

IN WITNESS, &c.

(*a*) This deed does not require acknowledgment by the married woman, or the concurrence of her husband. It is considered clear that a beneficial tenant for life is "a person beneficially entitled in right of the term to possession," within the meaning of sub-sect. 2 of sect. 65 of the Act.

No. CLVI.

DEED *to* CONVERT *a* LONG TERM *of* YEARS *into a* FEE SIMPLE *by* HUSBAND AND WIFE (*a*).

ENLARGEMENT OF TERM INTO FEE SIMPLE BY HUSBAND AND WIFE.

TO ALL TO WHOM THESE PRESENTS SHALL COME, A. B., of, &c., and C., his wife, send greeting (*recite creation of term for* 700 *years and other recitals shewing that it became vested in C. B. before* 1883, *and that C. B. married before that date*): NOW the said A. B. and C., his wife, by virtue of the Conveyancing and Law of Property Act, 1881, sect. 65, hereby declare that the said term of 700 years as to all the premises therein comprised, shall henceforth be enlarged into a fee simple.

Enlargement by husband and wife of long term into fee simple

IN WITNESS, &c.

No. CLVII.

DEED *to convert a* LONG TERM *of* YEARS *into a* FEE SIMPLE *by a* TENANT FOR LIFE *of a* SETTLED ESTATE (*by* INDORSEMENT *on the* SETTLEMENT).

ENLARGEMENT OF TERM INTO FEE BY TENANT FOR LIFE OF SETTLED ESTATE.

KNOW ALL MEN BY THESE PRESENTS that I, the within-named A. B., being beneficially entitled under the within-written indenture to the possession of the lands and hereditaments comprised in the term of 1000 years created by the within-recited indenture of the —— day of ——, 18—, and which lands and hereditaments were by the within-written indenture assigned unto the within-named E. F. and G. H. for the unexpired residue of the said term, by virtue of the Conveyancing and Law of Property Act, 1881, sect. 65, hereby declare that the said term of 1000 years, as to all the premises therein comprised, shall henceforth be enlarged into a fee simple.

Enlargement by tenant for life of long term into fee simple.

IN WITNESS, &c.

(*a*) This deed does not require acknowledgment by the married woman.

No. CLVIII.

CONVEYANCE OF LAND HELD FOR TERM SETTLED BY REFERENCE TO FREEHOLDS, AND ENLARGED TO USES OF FREEHOLDS

CONVEYANCE *of* LAND *held for a* LONG TERM *of* YEARS, *and* SETTLED *in trust by* REFERENCE *to* FREEHOLD LAND, *and which* TERM *has been* ENLARGED *into a* FEE SIMPLE *to the* USES *of the* FREEHOLDS.

Parties.

THIS INDENTURE, made the —— day of ——, BETWEEN the within named E. F. and G. H. (*trustees of the settlement*), of the one part, and I. K., of, &c. (*grantee to uses*), of the other part: WITNESSETH that, pursuant to the direction in this behalf contained in the Conveyancing and Law of Property Act, 1881, section 65, the said E. F. and G. H., as trustees, hereby convey unto the said I. K., ALL the lands and hereditaments which by the within-written indenture were assigned unto the said E. F. and G. H. for the unexpired residue of a term of 1000 years, created by the within-written indenture of the —— day of ——, and which term has been enlarged into a fee simple by the above-written deed-poll, dated the day before the date of these presents: TO HOLD the same unto the said I. K. in fee simple, TO THE USES, upon the trusts, and with and subject to the powers and provisions by and in the within-written indenture declared and contained of and concerning the freehold hereditaments thereby settled, or such of them as are now subsisting and capable of taking effect.

Pursuant to direction in Conveyancing Act.

Trustees of settlement convey parcels comprised in term which has been enlarged.

To uses of settled freeholds

IN WITNESS, &c.

No. CLIX.

ACKNOWLEDGMENT OF RIGHT TO PRODUCTION OF DEEDS, &C.

ACKNOWLEDGMENT *of* RIGHT *of* PURCHASER *to* PRODUCTION *of* DOCUMENTS, *and* UNDERTAKING *for their* SAFE CUSTODY (*a*).

Parties.

WHEREAS, &c. (*Recite conveyance by A. B. of hereditaments to C. D. in fee simple*): AND WHEREAS the documents com-

(*a*) The acknowledgment and undertaking need not be under seal. It should be stamped with an ordinary 6d. agreement stamp.

The form will be the same whether the vendor is beneficial owner or trustee. See *suprà*, 211.

prised in the schedule hereto, relate not only to the hereditaments conveyed by the hereinbefore recited indenture, but also to other hereditaments of the said A. B., and it hath therefore been agreed that the said A. B. shall retain the same documents, and shall give the acknowledgment and undertaking hereinafter contained: NOW THE SAID A. B. hereby acknowledges the right of the said C. D. to production of the documents mentioned in the schedule hereto, and to delivery of copies thereof, and hereby undertakes for the safe custody thereof.

IN WITNESS, &c.

ACKNOWLEDGMENT OF RIGHT TO PRODUCTION OF DEEDS, &c.

Recite that deeds relate as well to property of vendor.

Agreement.

Acknowledgment by vendor of right of purchaser to production of documents, &c.

THE SCHEDULE ABOVE REFERRED TO.

No. CLX.

ACKNOWLEDGMENT *by* ONE *Purchaser to* ANOTHER *of* RIGHT *to* PRODUCTION *of* DOCUMENTS *which relate to* BOTH *the purchased* PROPERTIES, *and* UNDERTAKING *for their* SAFE CUSTODY.

ACKNOWLEDGMENT BY ONE PURCHASER TO ANOTHER OF RIGHT TO PRODUCTION OF DEEDS, &c.

WHEREAS by an indenture dated the —— day of ——, and made between E. F., of the one part, and A. B., of the other part, for the considerations therein mentioned, certain lands and hereditaments situate, &c., and therein particularly described, were conveyed by the said E. F. unto and to the use of the said A. B., in fee simple: AND WHEREAS, by an indenture bearing even date with but executed prior to the execution of this writing, and made between the said E. F., of the one part, and C. D., of, &c., of the other part, for the consideration therein mentioned, ALL, &c. (*parcels*), and therein particularly described, have been conveyed by the said E. F. unto and to the use of the said C. D., in fee simple: AND WHEREAS the documents comprised in the schedule hereto, relate as well to the hereditaments comprised in the said indenture of the ——

Recite conveyance of lands to one purchaser.

Conveyance of lands to another purchaser.

That deeds, &c., relate to both properties,

ACKNOWLEDGMENT BY ONE PURCHASER TO ANOTHER OF RIGHT TO PRODUCTION OF DEEDS, &c.

day of ——, as also to the hereditaments comprised in the said indenture bearing even date herewith, and the same have been delivered to the said A. B., who has agreed to give the acknowledgment and undertaking hereinafter contained: NOW THE SAID A. B. hereby acknowledges (*Acknowledgment and undertaking by A. B., see suprà*, p. 443).

and agreement by purchaser under first conveyance to give acknowledgment to other purchaser.

IN WITNESS, &c.

THE SCHEDULE ABOVE REFERRED TO.

No. CLXI.

ACKNOWLEDGMENT *by a* MORTGAGEE *of the right of the* PURCHASER *to the* PRODUCTION *of* DOCUMENTS *on the* MORTGAGEE'S RELEASE *of a* PART *of* LANDS *comprised in his* MORTGAGE, *and* COVENANT *by* MORTGAGOR *to give* UNDERTAKING *on the* DOCUMENTS *coming into his* POSSESSION.

ACKNOWLEDGMENT BY MORTGAGEE AND COVENANT BY MORTGAGOR TO GIVE UNDERTAKING.

THIS INDENTURE made the —— day of ——, BETWEEN A. B., of, &c. (*mortgagor*), of the first part, C. D., of, &c., (*mortgagee*) of the second part, and E. F., of, &c., (*purchaser*), of the third part. (*Recite indenture of mortgage for securing payment by A. B. to C. D. of* £1000 *and interest; that principal money is still due.*) AND WHEREAS by an indenture dated, &c., and made between the said C. D., of the first part, the said A. B., of the second part, and E. F., of, &c., of the third part, certain hereditaments situate in the parish of ——, in the county of ——, in the indenture now in recital particularly described, being part of the hereditaments comprised in the said indenture of mortgage, has been conveyed by the said C. D. at the request of the said A. B. unto and to the use of the said E. F. in fee simple discharged from the said principal sum of £1000, and the interest thereof and all claims and demands on account thereof respectively: AND WHEREAS the documents comprised in the schedule hereto relate to the hereditaments which still remain subject to the said indenture of mortgage as well as to

Recite mortgage.

Conveyance of part of hereditaments comprised in mortgage.

the hereditaments comprised in the said indenture dated the —— day of ——: And whereas the said C. D. has agreed to give the acknowledgment, and the said A. B. has also agreed to covenant to give the undertaking, in respect of the said documents, which are respectively hereinafter contained: Now the said C. D. hereby acknowledges the right of the said E. F. to production of the documents mentioned in the schedule hereto, and to delivery of copies thereof, and the said A. B. hereby covenants with the said E. F. that the said A. B., his heirs or assigns, will, when and so soon as the said documents shall come into his or their possession, give to the said E. F., his heirs or assigns, an undertaking for their safe custody, and that until such undertaking shall be given he or they shall be subject to the same obligations in all respects as if such undertaking had been given.

ACKNOWLEDGMENT BY MORTGAGEE AND COVENANT BY MORTGAGOR TO GIVE UNDERTAKING.

That documents in schedule refer also to hereditaments retained, and will therefore remain in custody of mortgagee.

Agreement by mortgagee to give acknowledgment to purchaser.

In witness, &c.

Acknowledgment by mortgagee and covenant by mortgagor to give undertaking

The Schedule above referred to.

No. CLXII.

ACKNOWLEDGMENT *by* Purchaser, *to whom the* Documents, *&c., are* Delivered, *of* Right *of* Vendor *to their* Production, *and* Undertaking *for their* Safe Custody.

ACKNOWLEDGMENT OF RIGHT OF VENDOR TO PRODUCTION, &C.

WHEREAS by an indenture bearing even date with this writing, and made between C. D., of the one part, and A. B., of the other part, certain hereditaments in the parish of ——, in the county of ——, therein particularly described, have been conveyed by the said C. D. unto and to the use of the said A. B., in fee simple: And whereas the documents comprised in the schedule hereto relate as well to the hereditaments so conveyed to the said A. B. as aforesaid, as also to other hereditaments of less value retained by the said C. D.: And whereas

Recite deed of even date granting freeholds of greater value to purchaser.

That deeds, &c., relate to hereditaments conveyed as well as to other hereditaments

ACKNOWLEDGMENT OF RIGHT OF VENDOR TO PRODUCTION, &c.

of less value retained by vendor.

Acknowledgment and undertaking by purchaser.

on the completion of the said purchase the said documents were delivered to the said A. B. upon the understanding that he should give the acknowledgment and undertaking hereinafter contained: NOW THE SAID A. B. hereby acknowledges (*Acknowledgment and undertaking by A. B., suprà*, p. 443).

IN WITNESS, &c.

THE SCHEDULE ABOVE REFERRED TO.

No. CLXIII.

ACKNOWLEDGMENT AS TO RIGHT TO PRODUCTION OF DEEDS BY ONE PURCHASER TO FORMER PURCHASER, &c.

ACKNOWLEDGMENT *by* ONE PURCHASER *of* RIGHT *of* FORMER PURCHASER *of part of the* PROPERTY, *to* PRODUCTION *of* DOCUMENTS, *and* UNDERTAKING *for their* SAFE CUSTODY, *by way of substitution for a* COVENANT *which had been entered into by the* VENDOR.

Parties.

Sale by original covenantor of part of hereditaments to which the deeds relate,

and contemporaneous deed of covenant by him for production of deeds, &c., with a proviso for determining covenant on purchaser of remaining hereditaments entering into similar covenant.

Sale by original covenantor of remainder of hereditaments.

WHEREAS, by an indenture dated, &c., and made between E. F. of the one part, and C. D. of the other part, for the consideration therein mentioned, certain hereditaments, situate, &c., were conveyed by the said E. F. unto and to the use of the said C. D., his heirs and assigns for ever, and by an indenture bearing even date with the said indenture, the said E. F. entered into a covenant with the said C. D. for the production of the documents comprised in the schedule hereto, subject nevertheless to a proviso that in case the said E. F., his heirs or assigns, should dispose of such of the hereditaments to which the said documents should relate, as had not so been sold to the said C. D. as aforesaid, and should deliver the same documents to such purchaser, and should thereupon procure such purchaser to enter into a covenant with the said C. D. similar to the covenant thereinbefore contained, then the said covenant should cease and become void: AND WHEREAS, by an indenture dated, &c., and made, &c., for the consideration therein mentioned, such of the said hereditaments as were not so sold to the said C. D. as aforesaid, have been

conveyed by the said E. F. unto and to the use of the said A. B., in fee simple: AND WHEREAS upon the treaty for the last-mentioned sale it was agreed that the said documents should be handed over to and held by the said A. B. as such purchaser as aforesaid, and that for the purpose of discharging the said E. F. from the obligation of the said covenant for that purpose contained in the said recited indenture of the —— day of ——, the said A. B. should give the acknowledgment and undertaking hereinafter contained: AND WHEREAS, in consequence of such arrangement the said C. D. hath delivered up to the said E. F. the said recited indenture of covenant, dated the —— day of ——, as the said E. F. hereby acknowledges: NOW, in pursuance of the aforesaid agreement, and in consideration of the premises, the said A. B. hereby acknowledges (*acknowledgment and undertaking by A. B. to C. D., see supra, p.* 443).

ACKNOWLEDGMENT AS TO RIGHT TO PRODUCTION OF DEEDS BY ONE PURCHASER TO FORMER PURCHASER, &C.

Arrangement that purchaser of remainder should hold deeds and give acknowledgment to original covenantor.

Delivery up of original deed of covenant.

IN WITNESS, &c.

THE SCHEDULE ABOVE REFERRED TO.

No. CLXIV.

ACKNOWLEDGMENT *of the* RIGHT *of* PURCHASER *to* PRODUCTION *of* TWO SETS *of* DOCUMENTS *and* UNDERTAKING *for their* SAFE CUSTODY *by the respective* HOLDERS *of such* DOCUMENTS.

ACKNOWLEDGMENT AS TO TWO SETS OF DEEDS, &C.

WHEREAS (*Recite conveyance to purchaser by deed of even date*): AND WHEREAS the documents comprised in the first part of the schedule hereto relate not only to the hereditaments conveyed by the hereinbefore recited indenture, but also to other hereditaments of the said A. B. of greater value: AND WHEREAS the documents comprised in the second part of the said schedule relate not only to the hereditaments conveyed by the hereinbefore recited indenture, but also to hereditaments of greater value lately sold and conveyed by the said A. B. to C. D.: AND WHEREAS it has been agreed that the said docu-

Parties.

Recite conveyance to purchaser.

That deeds in schedule relate also to land of holders thereof.

Agreement as to

ACKNOWLEDGMENT AS TO TWO SETS OF DEEDS, &c.

custody of deeds.

ments comprised in the first part of the said schedule shall be retained by the said A. B., and that the said documents comprised in the second part of the said schedule shall be delivered to the said C. D., and that the said A. B. and C. D. respectively shall give the acknowledgment and undertaking hereinafter contained: AND WHEREAS the said documents comprised in the second part of the said schedule have accordingly been delivered to the said C. D.: NOW THE SAID A. B., as to the documents comprised in the first part of the schedule hereto, hereby acknowledges the right of the said E. F. to production thereof, and to delivery of copies thereof, and hereby undertakes for the safe custody thereof; and the said C. D., as to the documents comprised in the second part of the schedule hereto, hereby acknowledges the right of the said E. F. to production thereof, and to delivery of copies thereof, and hereby undertakes for the safe custody thereof.

Acknowledgment and undertaking.

IN WITNESS, &c.

THE SCHEDULE ABOVE REFERRED TO.

THE FIRST PART.

THE SECOND PART.

No. CLXV.

ACKNOWLEDGMENT AND UNDERTAKING AS TO DEEDS BY DIFFERENT PERSONS.

ACKNOWLEDGMENT *of* RIGHT *of* PURCHASER *to* PRODUCTION *and* UNDERTAKING *for* SAFE CUSTODY *of* DOCUMENTS *by* DIFFERENT PERSONS *as to* DIFFERENT DOCUMENTS, ONE *of the Covenantors being* OWNER *in* FEE, ANOTHER *a* MORTGAGEE, OTHERS *being a* TENANT FOR LIFE *and* REMAINDERMAN, *and* OTHERS *being* TRUSTEES.

Recite

THIS INDENTURE, &c. (*date and parties*): WHEREAS (*Recite conveyance to N. O. by deed of even date*): AND WHEREAS

ACKNOWLEDGMENT AND UNDERTAKING AS TO DEEDS BY DIFFERENT PERSONS.

the hereditaments comprised in the hereinbefore recited indenture were immediately before the said sale thereof, vested as follows (that is to say), one undivided third part or share thereof was vested in A. B., in fee simple; one other undivided third part or share thereof was vested in C. D. as mortgagee in fee simple, and the equity of redemption of the same part or share was vested in E. F., during his life, with remainder to G. H., in fee simple; and the remaining one undivided third part or share of the said hereditaments was vested in I. K. and L. M., as devisees in trust for sale: AND WHEREAS the documents comprised in the schedule hereto, relate as well to the hereditaments comprised in the said indenture as to other hereditaments of greater value held by the same title, and the documents comprised in the first part of the said schedule, are in the custody of the said A. B.; the documents comprised in the second part of the said schedule are in the custody of the said C. D., as mortgagee; and the documents comprised in the third part of the said schedule, are in the custody of the said I. K. and L. M.: AND WHEREAS it has been agreed that the said documents shall remain in the custody in which the same respectively are now as aforesaid, and that the said several persons shall give the respective acknowledgments and undertakings hereinafter contained. NOW in pursuance of the said agreement and in consideration of the premises, the said A. B. as to the documents mentioned in the first part of the schedule hereto, hereby acknowledges the right of the said N. O. to production thereof, and to delivery of copies thereof, and hereby undertakes for the safe custody thereof; and the said C. D., as to the documents mentioned in the second part of the said schedule, hereby acknowledges the right of the said N. O. to production thereof, and to delivery of copies thereof, and the said E. F. and G. H. hereby respectively covenant with the said N. O., his heirs and assigns, that when and so soon as the documents mentioned in the second part of the said schedule shall come into the possession of the said E. F. or his assigns, or of the said G. H., his heirs or assigns, the person or persons into whose possession the said documents shall come as aforesaid will give to the said N. O., his heirs or assigns, an undertaking for their safe custody, and that until such undertaking as aforesaid shall be given, he or they shall be subject to the same obligations in

that immediately before sale the purchased property belonged to parties named according to the shares and interests mentioned.

That deeds &c., in schedule relate also to other property held by the same title.

Arrangement that deeds shall remain in present custody.

Acknowledgment and undertaking by persons retaining deeds

ACKNOWLEDGMENT AND UNDERTAKING AS TO DEEDS BY DIFFERENT PERSONS.

all respects as if such undertaking had been given; and the said I. K. and L. M., as to the documents mentioned in the third part of the said schedule hereby acknowledge the right of the said N. O. to production thereof and to delivery of copies thereof, and hereby undertake for the safe custody thereof.

In witness, &c.

The Schedule above referred to.

First Part.

Second Part.

Third Part.

MORTGAGES.

Division of the subject.

It is proposed in this Dissertation to consider— I. The usual form of a mortgage of freehold, copyhold, and leasehold property respectively. II. Equitable mortgages by deposit of title deeds. III. The nature and incidents of the mortgagor's estate, and particularly his right or equity of redemption. IV. The remedies of the mortgagee to recover his debt. V. The powers, duties, and liabilities of a mortgagee in possession. VI. The effect of the Statutes of Limitation as between mortgagor and mortgagee. VII. The order of liability of the mortgaged property and the general estate of the mortgagor or other person liable to the debt. VIII. Mortgages under powers including mortgages by executors. IX. The rights and priorities of several mortgagees and incumbrancers amongst themselves, the protection afforded to purchasers and mortgagees against concealed trusts and incumbrances by the possession of the legal estate, the doctrine of tacking, notice actual and constructive, and the consequence of laches on the part of a mortgagee particularly in reference to the title deeds. X. Some precautions to be observed by a person advancing money on mortgage. XI. Transfers of mortgages and reconveyances. XII. Stamps on mortgages and deeds relating to mortgages.

I. *The usual form of a mortgage of freehold, copyhold, and leasehold property respectively.*

Ordinary form of mortgage of freeholds.

A mortgage is a conveyance of property to secure the payment of money or money's worth. Its ordinary form

is a conveyance by the mortgagor to the mortgagee, subject to a proviso or condition for a reconveyance on payment of the money intended to be secured on a day named, which is usually six months from the date of the deed. The conveyance is preceded or followed by covenants by the mortgagor with the mortgagee for payment of principal and interest on the appointed day, and if the principal is not paid on that day, for the future payment of interest half-yearly. Under the latter covenant arrears of interest can be sued for without requiring payment of the principal. If the property consists of houses or buildings, there should be a covenant for insurance against fire. Before the recent Act, covenants for title and a power of sale were added.

ordinary form of mortgage of copyholds.

A mortgage of copyholds is usually effected by a surrender to the mortgagee, subject to a condition for making the surrender void on payment of principal and interest on a given day. The surrender is accompanied or preceded by a deed containing covenants for payment of principal and interest, and for insurance (if necessary), similar to those in a mortgage of freeholds. The mortgagee is seldom admitted, as that would involve the payment of a fine, and would render the mortgagee liable to the customary services; and it would also involve the necessity of a re-admission of the mortgagor on the mortgage being paid off. On the repayment of the mortgage-money, the mortgagee, if he has not been previously admitted, usually gives a warrant to the steward to vacate the surrender, and a receipt for the mortgage-money should be indorsed on the deed accompanying or preceding the surrender.

ordinary form of mortgage of leaseholds.

Mortgages of leaseholds are made either by assignment for all the term and interest of the mortgagor, or by underlease for all the term except the last day or the last few days. The latter course should generally be adopted where the rent reserved by the lease is more than nominal, or the covenants are onerous; for if the mortgagee takes an assignment, a privity is established between him and the lessor, and he may be sued for the rent or for a breach of any of the covenants.

Form of

The proviso for redemption should provide for the re-

conveyance of the property to the mortgagor, according to his former estate, or if the property is in settlement, to the uses subsisting under such settlement. Proviso for redemption.

If, it is intended that the deed shall operate not only as a mortgage but also as a resettlement of the property to different uses, or to alter in some mode the rights and interests existing in it subject to the mortgage, such an intention should be clearly expressed. A mere reservation of the right of redemption to uses differing from the prior uses, will not be sufficient if the difference is such as may be supposed to arise from inaccuracy or mistake (*a*). If, however, the difference is such as to show clearly an intention to alter the existing uses, such an intention will prevail. Thus, if on a mortgage by a tenant in fee the equity of redemption should be reserved to him in tail, yet the land would, subject to the mortgage, revert to him in fee simple in the absence of an evident intention to resettle the estate (*b*). But in a case (*c*) where a tenant in tail under a will suffered a recovery to such uses as he should appoint by deed or will and subject thereto to the uses of the will, and afterwards made a mortgage of part of the estate in fee and limited the equity of redemption to the prior uses, and then joined in a transfer of the mortgage and reserved the equity of redemption to himself in fee, it was held that the equity of redemption did not revert to the old uses. Effect of reservation of right of redemption to different uses.

Again, on a mortgage of a wife's lands to secure her husband's debt, if the equity of redemption is reserved to the husband and his heirs, without any further expression of intention to alter the previous rights, the equity of redemption will result to the wife, but if the mortgage should be for a term of years, and the proviso for redemption should direct that upon payment of the money the property should be reconveyed to the husband or to uses other than to the wife, the equity of redemption would belong to the husband, or go accord- Reservation of equity of redemption of wife's lands.

(*a*) 1 Sug. Pow. 349, 350.
(*b*) *Per* Lord Eldon in Innes *v.* Jackson, 16 Ves. 367.
(*c*) Anson *v.* Lee, 4 Sim. 364.

ing to the uses limited (*d*). In *Martin* v. *Mitchell* (*e*), the right of redemption was reserved to such uses as the husband and wife should appoint, and in default of appointment to the use of the wife in fee, and the Court doubted whether the wife's estate was altered. But it seems clear that a proviso for redemption in the form last mentioned, would now be deemed sufficient evidence of the wife's intention to enable her, with the concurrence of her husband, to deal with the property without an acknowledged deed (*f*).

Mortgages under powers.

The same principles apply to mortgages executed under powers where the right of redemption is reserved to uses different from those previously existing (*g*).

Provision for reducing rate of interest on punctual payment.

It is not unusual, with a view to secure the punctual payment of interest, to provide for its payment in the first instance, at a higher rate than is intended to be taken, with a proviso reducing it to the stipulated rate, in case of punctual payment on the proper half-yearly day, or within a short time (generally one month) thereafter. It would seem the more direct plan to make the interest payable, in the first instance, at the stipulated rate, and to provide for an increased rate in default of punctual payment. But such a provision would not answer the purpose, as it would be regarded in the light of a penalty and relieved against (*h*). It has been held that under the usual proviso reducing the rate of interest on punctual payment, a mortgagee in possession may charge the mortgagor with the higher rate, although he receives the rent before the day fixed for payment of the interest (*hh*).

Provision for continuing loan for a term certain.

Sometimes it is stipulated, particularly where the loan is one of a large amount, that the loan shall remain on the security for a term certain. This is usually effected

(*d*) Jackson *v.* Innes, 1 Bligh, 104, 136; Reeve *v.* Hicks, 2 Sim. & Stu. 403; Wood *v.* Wood, 7 Beav. 183; Stansfield *v.* Hallam, 29 Law J. (N. S.) Ch. 173; Lord Hastings *v.* Astley, 30 Beav. 269; Pigott *v.* Pigott, L. R. 4 Eq. 549; Jones *v.* Davies, 8 Ch. D. 205; *In re* Belton's Trust Estates, L. R. 12 Eq. 553.

(*e*) 2 Jac. & Walk. 413.

(*f*) Atkinson *v.* Smith, 3 De G. & J. 186.

(*g*) Whitbread *v.* Smith, 3 De G. M. & G. 727; Heather *v.* O'Neil, 2 De G. & J. 399.

(*h*) Nicholls *v.* Maynard, 3 Atk. 519.

(*hh*) Union Bank *v.* Ingram, 16, C. D. 53.

by making the principal money payable, in the first instance, at the usual time, with provisions, first, that the mortgagee shall not call in the money before the end of the term agreed on, if the interest is punctually paid, and the mortgagor's covenants (if any) are duly performed in the meantime; and, secondly, that the mortgagor shall not be at liberty to pay off the money before the end of the term agreed on, unless the mortgagee shall be willing to receive it.

Rule that a mortgagor must give six months' notice before paying off, or pay six months' interest.

It is a well established rule that a mortgagee, whose money is not paid at the appointed day, is entitled to six months' notice previously to his being paid off, or to six months' interest (*i*), unless it be paid in pursuance of a demand made, or proceedings instituted by him (*k*). Where there is a provision to continue the loan for a term certain, it seems doubtful whether the mortgagor would not be entitled to pay it at the end of the period without giving the six months' notice, and it is therefore prudent to provide for this by the deed.

Covenants for title are in a mortgage absolute.

It has always been the practice to make the mortgagor enter into absolute covenants for title. The reason seems to be that the mortgagee is entitled to the best security that the mortgagor can give him, and as the only damages which could be recovered by the mortgagee for a breach of the covenants for title, would be the amount due on the mortgage, which the mortgagor is bound in any case to pay, he cannot complain of the unqualified liability. No doubt this is so, while the mortgage continues, and, in fact, during that period the covenants, whether absolute or qualified, are of no value, if the deed also contains a covenant by the mortgagor to pay the money, it being the obvious course to proceed on the latter, and not on the former covenants. But if the mortgagee sells under the power of sale, the covenants for title enure to the benefit of the purchaser, and there seems no reason why, as regards him, the mortgagor should remain subject to absolute covenants. It would, therefore, appear more in accordance with

Quære—whether on

(*i*) See Day *v.* Day, 31 Beav. 970.

(*k*) Letts *v.* Hutchins, L. R. 13 Eq. 176.

principle the covenants should not be qualified.

principle, if the covenants for title in a mortgage were qualified as in a conveyance on a sale; but the present practice is firmly established, and the answer to any objection which might be raised by the mortgagor to absolute covenants, on the ground above referred to, would probably be that it is his own fault if he allows the property to be sold under the power.

Under recent Act, absolute covenants for title are implied in a mortgage by a mortgagor as beneficial owner.

By the Conveyancing Act, 1881, section 7, it is provided that in every conveyance, by way of mortgage, there shall be implied the following covenant by every person who conveys and is expressed to convey as beneficial owner (namely) :—

For right to convey.

That the person who so conveys, has, with the concurrence of every other person, if any, conveying by his direction, full power to convey the subject-matter expressed to be conveyed by him, subject as, if so expressed, and in the manner in which it is expressed to be conveyed;

For quiet enjoyment.

and also that, if default is made in payment of the money intended to be secured by the conveyance, or any interest thereon, or any part of that money or interest, contrary to any provision in the conveyance, it shall be lawful for the person to whom the conveyance is expressed to be made, and the persons deriving title under him, to enter into and upon, or receive, and thenceforth quietly hold, occupy, and enjoy or take and have, the subject-matter expressed to be conveyed, or any part thereof, without any lawful interruption or disturbance by the person who so conveys, or any person conveying by his direction, or any other person not being a person claiming in respect of an estate or interest subject whereto the

Freedom from incumbrances.

conveyance is expressly made; and that, freed and discharged from, or otherwise by the person who so conveys sufficiently indemnified against, all estates, incumbrances, claims, and demands whatever, other than those subject whereto the conveyance is expressly

Further assurance

made; and further, that the person who so conveys and every person conveying by his direction, and every person deriving title under any of them, and every

other person having or rightfully claiming any estate or interest in the subject-matter of conveyance, or any part thereof, other than an estate or interest subject whereto the conveyance is expressly made, will from time to time and at all times, on the request of any person to whom the conveyance is expressed to be made, or of any person deriving title under him, but, as long as any right of redemption exists under the conveyance, at the cost of the person so conveying, or of those deriving title under him, and afterwards at the cost of the person making the request, execute and do all such lawful assurances and things for further or more perfectly assuring the subject-matter of conveyance and every part thereof to the person to whom the conveyance is made, and to those deriving title under him, subject as, if so expressed, and in the manner in which the conveyance is expressed to be made, as by him or them or any of them shall be reasonably required:

And in a conveyance by way of mortgage of leasehold property there is to be implied the following further covenant by a person who conveys and is expressed to convey as beneficial owner (namely):— And in mortgage of leaseholds by mortgagor as beneficial owner,

That the lease or grant creating the term or estate for which the land is held is, at the time of conveyance, a good, valid, and effectual lease or grant of the land conveyed and is in full force, unforfeited, and unsurrendered and in nowise become void or voidable, and that all the rents reserved by, and all the covenants, conditions, and agreements contained in, the lease or grant, and on the part of the lessee or grantee and the persons deriving title under him to be paid, observed, and performed, have been paid, observed, and performed up to the time of conveyance; and also that the person so conveying, or the persons deriving title under him, will at all times, as long as any money remains on the security of the conveyance, pay, observe, and perform, or cause to be paid, observed, and per- that lease is valid, and for payment of rent and performance of covenants.

formed, all the rents reserved by, and all the covenants, conditions, and agreements contained in, the lease or grant, and on the part of the lessee or grantee and the persons deriving title under him to be paid, observed, and performed, and will keep the person to whom the conveyance is made, and those deriving title under him indemnified against all actions, proceedings, costs, charges, damages, claims, and demands (if any) to be incurred or sustained by him or them by reason of the non-payment of such rent or the non-observance or non-performance of such covenants, conditions, and agreements, or any of them.

Statutory covenants very comprehensive.

The statutory covenants above set out appear to be fully as comprehensive as any which have been hitherto inserted in mortgage deeds, and it is considered that the insertion of express covenants may in future be safely dispensed with in ordinary cases.

By the above-mentioned Act, section 19, it is provided that a mortgagee, where the mortgage is by deed, shall have (among other powers)—

Power to insure given by Act.

A power at any time after the date of the mortgage deed to insure and keep insured against loss or damage by fire any building, or any effects or property of an insurable nature, whether affixed to the freehold or not, being or forming part of the mortgaged property, and the premiums paid for any such insurance shall be a charge on the mortgaged property, in addition to the mortgage-money, and with the same priority, and with interest at the same rate as the mortgage money:

And it is also provided as follows:—

Amount of insurance.

Section 23.—(1.) The amount of an insurance effected by a mortgagee against loss or damage by fire under the power in that behalf conferred by this Act shall not exceed the amount specified in the mortgage deed, or, if no amount is therein specified, then shall not exceed two third parts of the amount that would be required, in case of total destruction, to restore the property insured.

(2.) An insurance shall not, under the power conferred by this Act, be effected by a mortgagee in any of the following cases (namely):

(i.) Where there is a declaration in the mortgage deed that no insurance is required:

(ii.) Where an insurance is kept up by or on behalf of the mortgagor in accordance with the mortgage deed:

(iii.) Where the mortgage deed contains no stipulation respecting insurance, and an insurance is kept up by or on behalf of the mortgagor, to the amount in which the mortgagee is by this Act authorised to insure.

(3.) All money received on an insurance effected under the mortgage deed or under this Act shall, if the mortgagee so requires, be applied by the mortgagor in making good the loss or damage in respect of which the money is received.

(4.) Without prejudice to any obligation to the contrary imposed by law, or by special contract, a mortgagee may require that all money received on an insurance be applied in or towards discharge of the money due under his mortgage.

Having regard to statutory provision, mortgage should contains covenant to insure, and to produce policy and receipts to mortgagee

It is considered that having regard to the above statutory provision as to insurance, a mortgage deed comprising buildings should now, as a general rule, contain a covenant by the mortgagor to insure to the amount considered necessary, and to produce the policy and the receipt to the mortgagee on demand, but that it is unnecessary to insert any further provision enabling the mortgagee to insure in case of the mortgagor's default. In fact it is better not to do so, as the statutory provision is probably more comprehensive in its operation than any which would be inserted.

The power of sale is considered in a subsequent part of this Dissertation.

If a proprietor of land has registered his title under the Land Transfer Act, 1875, he can only create a legal mortgage, or, to speak more correctly, a mortgage

which will be good against subsequent registered dealings with the land, by following the directions of the Act. The mortgage must be in the form prescribed by the Rules and Orders dated the 24th of December, 1875, with such alterations and additions only as are necessary to meet the circumstances of the case (*n*); and the instrument of charge must be attested by a solicitor, and duly verified, and left with the registrar (*o*), who will thereupon proceed to register it. The legal effect and operation of a registered charge is described in sections 22 to 28 inclusive of the Act.

II. *Equitable mortgages by deposit of title deeds.*

Equitable mortgage by deposit of deeds.

An equitable mortgage of lands or other property may be created by a deposit of the title deeds relating to them (*p*), or of a material portion of such deeds (*q*), or of one old deed falsely stated to be the only deed, there being in fact many subsequent ones (*r*), or, in the case of copyholds, by a deposit of copies of the court rolls, although there may be no accompanying memorandum or agreement expressive of the intention of the parties. And in a recent case it was held that a written order given by A. to B., directing C., a prior equitable mortgagee, to deliver to B. the title deeds so soon as his (C.'s) lien was satisfied, gave B. a valid equitable mortgage on the property to which the deeds related (*s*). It is, of course, assumed that there is no circumstance in the case to rebut the inference that the deposit was made to secure the debt. In *Chapman* v. *Chapman* (*t*), it was held that the mere fact of a bond creditor producing the title deeds a great many years after the alleged transaction, without explanation or evidence to show any connection between the bond debt and the

(*n*) Rule 58.
(*o*) Rule 20.
(*p*) Russel *v.* Russel, 1 B. C. C. 269; Edge *v.* Worthington, 1 Cox, 211; *Ex parte* Haigh, 11 Ves. 403; Hiorn *v.* Mills, 13 Ves. 114; *Ex parte* Mountford, 14 Ves. 606.
(*q*) Lacon *v.* Allen, 3 Drew. 579; Roberts *v.* Croft, 24 Beav. 223.
(*r*) Dixon *v.* Muckleston, L. R. 8 Ch. 155.
(*s*) Daw *v.* Terrell, 33 Beav. 218.
(*t*) 13 Beav. 308.

possession of the title deeds, would not operate as an equitable security.

If upon an advance the deeds are delivered to the lender, or to his solicitor, for the purpose of preparing a mortgage, such delivery will operate as an equitable security for the same (*u*). Delivery of deeds to prepare a mortgage.

A deposit of title deeds, without any memorandum operates *primâ facie* as an equitable security only for the sum due from the mortgagor at the time of the deposit, but parol evidence may be supplied to show that the deposit was made to secure future advances as well as the existing debt, and in that case the deposit will be a good equitable security for the future advances as well (*x*); and even where a memorandum accompanies the deposit, and such memorandum does not state that the deeds have been lodged with the mortgagee to secure future advances, yet the security will extend to them if it can be proved by parol evidence that it was intended that the security should operate to that extent (*y*). Effect of security by deposit of deeds.

It is not, however, prudent to deposit title deeds under any circumstances without a memorandum, clearly stating for what sum the property comprised in the deeds is to be an equitable security. Not prudent to deposit without memorandum.

An equitable mortgagee, by deposit of a lease, cannot be compelled by the lessor to take a legal assignment, and does not become liable to him in respect of the rent and covenants in the lease, although he may take possession (*z*). Effect of deposit of lease.

Where land is registered under the "Land Transfer Act, 1875," the deposit of the land certificate in the case of freehold land, and of the office copy of the registered lease, in the case of leasehold land, for the purpose of creating a lien on such land, is equivalent to a deposit of the title deeds (*a*). Deposit of land certificate under Land Transfer Act.

(*u*) Edge *v.* Worthington, 1 Cox, 211; Hockby *v.* Bantock, 1 Russ. 141; Keys *v.* Williams, 3 Y. & C. 55.

(*x*) *Ex parte* Whitbread, 19 Ves. 209.

(*y*) *Ex parte* Kensington, 2 Ves. & Bea. 79.

(*z*) Moore *v.* Gregg, 2 Phil. 717 (overruling Lucas *v.* Comerford, 8 Sim. 499); Cox *v.* Bishop, 26 L. J. (N. S.) Ch. 389; see also Moores *v.* Choat, 8 Sim. 508; Williams *v.* Bosanquet, 1 Br. & B. 238.

(*a*) Sec. 81.

Equitable mortgage by deposit not to be recommended.

It may be observed that the cases are few in which a lender of money would be advised to be content with an equitable mortgage by deposit, when he is able to procure a legal mortgage.

III. *The nature and incidents of the mortgagor's estate, and particularly his right or equity of redemption.*

Effect of non-payment of mortgage money at the appointed time.

If, as is usually the case, the money is not paid at the time appointed in the proviso for redemption, the estate of the mortgagee becomes absolute at law; but the Court, in the exercise of its equitable jurisdiction, enables the mortgagor at any time to redeem on payment to the mortgagee of the principal and interest due, together with the costs properly incurred by him in relation to the security; hence the estate of the mortgagor, after the day has passed without payment, is called an equity of redemption.

Mortgagee entitled to six months' notice.

A mortgagee is entitled to six months' notice before he can be redeemed, and if at the end of that time the full amount due to him is tendered, he must accept it; if he refuses, he will be made liable to the costs of the redemption suit thereby made necessary (*b*).

The law as to consolidation of mortgages before 1882.

It sometimes happens that when a mortgagor comes to redeem, the mortgagee claims to be paid not only the money secured by the particular mortgage, but also the money secured by some other mortgage—in other words, to consolidate the two. The law as to consolidation applicable to mortgages made before 1st January, 1882, is, that if a person makes two mortgages of different properties to the same person to secure different debts, or if the mortgages are in the first instance made to two different persons, and they subsequently become vested by transfer in the same person, the mortgagor cannot redeem one without the other, assuming that the time has come for redeeming both (*c*). But the rule

(*b*) Smith *v.* Green, 1 Col. 555; Harmer *v.* Priestley, 16 Beav. 569.

(*c*) Vint *v.* Padgett, 2 De G. & J. 611.

does not apply if previously to the union of the two mortgages the equity of redemption of one estate has been assigned to a third party. Thus, if a person mortgages Blackacre to A. for £100, and Whiteacre to B. for £50, and then sells and conveys the equity of redemption of Blackacre to C., and then both mortgages are transferred to D., C. is entitled to redeem the mortgage of Blackacre without paying also the money due to D. on the Whiteacre mortgage (*d*).

The rule altered by Conveyancing Act, 1881.

It is provided by the 17th section of the Conveyancing Act, 1881, that a mortgagor seeking to redeem any one mortgage shall by virtue of the Act be entitled to do so, without paying any money due under any separate mortgage made by him or by any person through whom he claims, on property other than that comprised in the mortgage which he seeks to redeem. But this enactment applies only when the mortgages or one of them are or is made after the 31st December, 1881, and so far as a contrary intention is not expressed in them or one of them.

It follows that if a person having mortgaged Blackacre borrows from the same person a further sum on the security of Whiteacre, intending that the latter sum shall be charged on Blackacre also, the second deed should recite or refer to the first and expressly make both properties subject to both debts (*e*).

Mortgagee lending further sum to mortgagor.

If a mortgagee of property lends a further sum to the mortgagor on the security of the same property, one mortgage cannot be redeemed without the other, and this rule applies to mortgages of equitable personalty as well as to mortgages of real estate (*f*).

Simple contract and specialty debts may be tacked to mortgage debt.

All simple contract and specialty debts may be tacked to a mortgage debt as against the heir, devisee, or executor of a mortgagor, where the equity of redemption is assets (*j*); but so as not to give the mortgagee a pre-

(*d*) Harter *v.* Colman, 19 C. D. 630; disapproving of Beevor *v.* Luck, 4 Eq. 537, in which the contrary was decided. See also Jennings *v.* Jordan, 6 Ap. Ca. 698.

(*e*) This is better than inserting in one or both of the deeds a clause in general terms negativing the operation of sect. 17 of the Act. See Precedents Nos. LXXIV., LXXV., *infra*, pp. 634, 635.

(*f*) Watts *v.* Simes, 1 D. M. & G. 240.

(*j*) Rolfe *v.* Chester, 20 Beav. 610; Thomas *v.* Thomas, 22 Beav. 341.

ference over other creditors, where the assets are insufficient (*k*).

A further advance cannot be tacked to a prior legal mortgage upon the strength of a parol agreement to that effect (*l*).

The subject of tacking as between successive incumbrancers is considered in a subsequent part of this Dissertation.

Persons entitled to redeem.

All persons having an estate or interest in the equity of redemption are entitled to redeem. Consequently, the trustee of a bankrupt may redeem, as well as subsequent mortgagees and judgment creditors (*m*). A first mortgagee must accept payment of the mortgage debt from the second mortgagee, and convey to him the mortgaged estate, and also if required transfer to him or to his nominee the mortgage debt (*n*).

Sureties.

Sureties for the payment of the mortgage debt may also redeem. It was decided that if a mortgagee advanced a further sum to the mortgagor on a further charge of the property, the surety could not redeem the mortgage without paying the further advance as well as the original sum (*o*), but this decision may be regarded as overruled (*p*). Where distinct sums are advanced at the same time on distinct securities, and a third person becomes security for one of the sums with knowledge of the whole transaction, the mortgagee will, except in cases coming within the 17th sect. of the Conveyancing Act, 1881, be entitled to tack both the debts, and to retain the securities for them against the surety until both sums are paid (*q*).

(*k*) Talbot *v.* Frere, 9 Ch. D. 568.

(*l*) *Ex parte* Hooper and Others, 1 Mer. 7.

(*m*) A judgment creditor had, by virtue of 1 & 2 Vict. c. 110, sec. 13, an actual estate or interest in equity in the debtor's land, and although the recent Act, 27 & 28 Vict. c. 112 provides that no judgment shall affect land until execution, the court will allow a judgment creditor to obtain the appointment of a receiver to redeem, and thus remove the legal impediment to his execution. See *suprà*.

(*n*) Smith *v.* Green, 1 Col. 555. Conveyancing Act, 1881, s. 15.

(*o*) Williams *v.* Owen, 13 Sim. 597.

(*p*) See Newton *v.* Chorlton, 10 Hare, 662; Pearl *v.* Deacon, 24 Beav. 180; Forbes *v.* Jackson, 19 Ch. D. 615.

(*q*) Fairbrother *v.* Wodehouse, 23 Beav. 18.

Where an equity of redemption is settled, the tenant for life has a right to redeem in preference to persons entitled in remainder (*r*), but having redeemed, he cannot compel those in remainder to redeem him. He may make the remaindermen parties to a redemption suit instituted by him against the mortgagor, so that they may be present at the taking of the accounts; he must, however, pay the costs of such remaindermen, and add them to his mortgage, and on his death his representative may bring an action for foreclosure against the remaindermen (*s*). Tenant for life.

The personal representative of a deceased mortgagor of real estate is not entitled to redeem in that capacity (*t*).

By 4 & 5 W. & M. c. 16, it is provided that if any person having once mortgaged, shall again mortgage, and shall not discover to the second mortgagee the former mortgage, he shall have no relief or equity of redemption against such second mortgagee, and the second mortgagee shall hold the land freed from the equity of redemption, and as fully as if his mortgage had been an absolute purchase. It has been decided that the statute being penal in its character, must be construed strictly, and that neither an equitable mortgagee by deposit of title deeds, nor a mortgagee under a deed in the form of a further charge without a proviso for redemption, is a second mortgagee within the meaning of the Act; and moreover that the Act confers no active remedy which can be enforced in equity (*u*). Forfeiture of equity of redemption if mortgagor makes second mortgage, concealing the first.

A mortgagor in possession is treated in equity as owner of the mortgaged property for most purposes, and he may exercise all ordinary acts of ownership. Thus, he may cut timber, unless the estate without the timber is a scanty security (*x*), and he may bring actions at law Power of mortgagor in possession.

(*r*) Ravald *v.* Russell, 1 Younge, 19; Raffety *v.* King, 1 Keen, 618; Wicks *v.* Scrivens, 1 John. & Hem. 215.

(*s*) Riley *v.* Croydon, 2 Dr. & Sm. 293.

(*t*) Cattly *v.* Simpson, 34 L. J. Ch. 96.

(*u*) Kennard *v.* Futvoye, 2 Gif. 81.

(*x*) King *v.* Smith, 2 Hare, 239.

in his own name for the recovery of rents and profits, or to prevent or recover damages, in respect of any trespass or other wrong relative to the mortgaged property, unless the cause of action arises on a lease or other contract made by him jointly with any other person (*y*). A mortgagor in possession, where the mortgage is made after the 31st Dec., 1881, is empowered by the Conveyancing Act, 1881, to make agricultural or occupation leases for any term not exceeding 21 years, or building leases for any term not exceeding 99 years, subject to certain conditions which are set out at length in Section 18 of the Act.

Recent Act enables a mortgagor in possession to grant leases.

When a lease is granted under the statutory power, and the rent is reserved to, or covenants are entered into with, the mortgagor as lessor, it is apprehended that if the mortgagee afterwards takes possession, or gives notice to pay the rent to him, the right to such rent, or to sue on the covenants, will pass to him.

Rent and benefit of lessee's covenants under lease by mortgagor under power pass to mortgagee if he takes possession.

A mortgagor with a power of leasing may grant a lease to a trustee for himself (*z*).

Mortgagor with power of leasing.

A mortgagor may cut and remove growing crops until possession has been demanded by the mortgagee, but not after such demand (*zz*).

Mortgagor in possession may cut growing crops.

IV. *The remedies of the mortgagee to recover his debt.*

Remedies of mortgagee.

A mortgagee has several remedies for the recovery of the mortgage money. He may foreclose the equity of redemption, or obtain a decree for sale through the medium of the Court; he may sell under the power of sale (if any) contained in his mortgage deed, or conferred on him by the recent Act; he may sue at law on the covenant for payment of principal and interest; or he may enter into possession of the property and pay himself out of the rents. The remedies by foreclosure, sale,

(*y*) 36 & 37 Vict. c. 66, sec. 25, subs. 5.

(*z*) Bevan *v.* Habgood, 1 J. & H. 222.

(*zz*) Bagnall *v.* Viller, 12 Ch. D. 812.

and action on the covenant, will be considered in this section.

Foreclosure.

A mortgagee of land, whether legal or equitable, may at any time after the day named for payment in the mortgage deed commence an action claiming foreclosure (*a*). The Court will thereupon decree an account to be taken of the amount due, and will name a time at the end of which, if the money is not paid, the mortgagor will be foreclosed. This time will, however, be enlarged in certain cases. After an absolute decree for foreclosure has been made, the mortgagee becomes absolute owner in equity as well as at law, of the mortgaged property.

Sale through the Court.

By the Conveyancing Act, 1881, it is provided that in any action, whether for foreclosure, or for redemption, or for sale, or for the raising and payment in any manner of mortgage money, the Court, on the request of the mortgagee, or of any person interested either in the mortgage money or in the right of redemption, and, notwithstanding the dissent of any other person, and notwithstanding that the mortgagee or any person so interested does not appear in the action, and without allowing any time for redemption or for payment of any mortgage money, may, if it thinks fit, direct a sale of the mortgage property on such terms as it thinks fit, including, if it thinks fit, the deposit in Court of a reasonable sum fixed by the Court, to meet the expenses of sale and to secure performance of the terms (*b*).

Power of sale, no longer necessary, such a power being now conferred by statute.

A power of sale has been hitherto an ordinary part of a properly drawn mortgage. But the insertion of such a power is no longer necessary, as the Conveyancing Act, 1881, sect. 19, provides that as regards mortgages executed after the 31st December, 1881, a mortgagee by deed shall by virtue of the Act have,

(*a*) James *v.* James, L. R. 16 Eq. 153. The right of foreclosure does not extend to a pledge of personal chattels, the remedy in respect to which is sale. Carter *v.* Wake, 4 Ch. D. 605.

(*b*) Sec. 25. This enactment is substituted for sect. 48 of 15 & 16 Vict. c. 86. Under it the Court has power to order a sale at any time before foreclosure. Union Bank of London *v.* Ingram, 20 Ch. D. 463. As to the construction of this section, see also Weston *v.* Davidson, W. N. 1882; Woolley *v.* Colman, W. N. 1882, p. 88.

A power, when the mortgage money has become due, to sell, or to concur with any other person in selling, the mortgaged property, or any part thereof, either subject to prior charges, or not, and either together or in lots, by public auction or by private contract, subject to such conditions respecting title, or evidence of title, or other matter, as he (the mortgagee) thinks fit, with power to vary any contract for sale, and to buy in at an auction or to rescind any contract for sale and to re-sell, without being answerable for any loss occasioned thereby :

and the Act contains the following provisions relating to the power of sale.

Regulation of exercise of power of sale.

Section 20. A mortgagee shall not exercise the power of sale conferred by this Act unless and until—

(i.) Notice requiring payment of the mortgage money has been served on the mortgagor or one of several mortgagors, and default has been made in payment of the mortgage money, or of part thereof, for three months after such service ; or

(ii.) Some interest under the mortgage is in arrear and unpaid for two months after becoming due ; or

(iii.) There has been a breach of some provision contained in the mortgage deed or in this Act, and on the part of the mortgagor, or of some person concurring in making the mortgage, to be observed or performed, other than and besides a covenant for payment of the mortgage money or interest thereon.

Conveyance, receipt, &c. on sale.

Section 21.—(1.) A mortgagee exercising the power of sale conferred by this Act shall have power, by deed, to convey the property sold, for such estate and interest therein as is the subject of the mortgage, freed from all estates, interests, and rights to which the mortgage has priority, but subject to all estates, interests, and rights which have priority to the mortgage ; except that, in the case of copyhold or customary land, the legal right to

admittance shall not pass by a deed under this section, unless the deed is sufficient otherwise by law, or is sufficient by custom, in that behalf.

(2.) Where a conveyance is made in professed exercise of the power of sale conferred by this Act, the title of the purchaser shall not be impeachable on the ground that no case had arisen to authorise the sale, or that due notice was not given, or that the power was otherwise improperly or irregularly exercised; but any person damnified by an unauthorised, or improper, or irregular exercise of the power, shall have his remedy in damages against the person exercising the power.

(3.) The money, which is received by the mortgagee, arising from the sale, after discharge of prior incumbrances to which the sale is not made subject, if any, or after payment into Court under this Act of a sum to meet any prior incumbrance, shall be held by him in trust to be applied by him, first, in payment of all costs, charges, and expenses, properly incurred by him, as incident to the sale or any attempted sale, or otherwise; and secondly, in discharge of the mortgage money, interest, and costs, and other money, if any, due under the mortgage: and the residue of the money so received shall be paid to the person entitled to the mortgaged property, or authorised to give receipts for the proceeds of the sale thereof.

(4.) The power of sale conferred by this Act may be exercised by any person for the time being entitled to receive and give a discharge for the mortgage money.

(5.) The power of sale conferred by this Act shall not affect the right of foreclosure.

(6.) The mortgagee, his executors, administrators, or assigns, shall not be answerable for any involuntary loss happening in or about the exercise or execution of the power of sale conferred by this Act or of any trust connected therewith.

(7.) At any time after the power of sale conferred by this Act has become exerciseable, the person entitled to exercise the same may demand and recover from any person, other than a person having in the mortgaged property an estate, interest, or right in priority to the mortgage, all the deeds

and documents relating to the property, or to the title thereto, which a purchaser under the power of sale would be entitled to demand and recover from him.

Mortgagee's receipts, discharges, &c.

Section 22.—(1.) The receipt in writing of a mortgagee shall be a sufficient discharge for any money arising under the power of sale conferred by this Act, or for any money or securities comprised in his mortgage, or arising thereunder; and a person paying or transferring the same to the mortgagee shall not be concerned to inquire whether any money remains due under the mortgage.

And a subsequent section contains the following provisions as to notice.

Regulations respecting notice.

Section 67.—(1.) Any notice required or authorized by this Act shall be in writing.

(2.) Any notice required or authorized by this Act to be served on a lessee or mortgagor shall be sufficient, although only addressed to the lessee or mortgagor by that designation, without his name, or generally to the persons interested, without any name, and notwithstanding that any person to be affected by the notice is absent, under disability, unborn, or unascertained.

(3.) Any notice required or authorized by this Act to be served shall be sufficiently served if it is left at the last-known place of abode or business in the United Kingdom of the lessee, lessor, mortgagee, mortgagor, or other person to be served, or, in case of a notice required or authorized to be served on a lessee or mortgagor, is affixed or left for him on the land or any house or building comprised in the lease or mortgage, or, in case of a mining lease, is left for the lessee at the office or counting-house of the mine.

(4.) Any notice required or authorized by this Act to be served shall also be sufficiently served, if it is sent by post in a registered letter addressed to the lessee, lessor, mortgagee, mortgagor, or other person to be served, by name, at the aforesaid place of abode or business, office, or counting-house, and if that letter is not returned through the post-office undelivered: and that service shall be deemed to be made at the time at which the registered letter would in the ordinary course be delivered.

A careful consideration of the above enactments will show that a mortgagee relying on the statutory power of sale will have every advantage that has been hitherto conferred on him in express terms by the mortgage deed, and some additional ones. In the rare cases in which it is thought necessary that the power should be exerciseable without notice to the mortgagor, a few words can be inserted in the deed, varying the terms of the Act in this respect.

Value of statutory power.

A contract entered into by a mortgagee to sell under a power of sale, is binding on the purchaser, although it may be signed before the expiration of the notice on which the validity of the sale is made to depend (*i*), but of course the contract will not be binding as against the mortgagor if he subsequently complies with the notice.

Contract to sell under power.

It will be observed that the Act provides that a conveyance made in professed exercise of the power is not to be impeachable on the ground of irregularity. This no doubt exempts a purchaser from all obligation to make any inquiry, but if facts are actually brought to his knowledge showing that the sale is improper, it is apprehended that he could not safely complete. Thus, in a case where a mortgagee sold, after tender of the principal and interest, to a person who bought with knowledge of the tender, the Court set aside the sale although the mortgage deed provided that "upon a sale purporting to be made under the aforesaid power no purchaser shall be bound to see or inquire as to the propriety or regularity of the sale, and that notwithstanding any impropriety or irregularity the same shall, as regards the purchaser, be deemed to be within the power, and valid accordingly" (*m*). Upon payment (and tender is equivalent to payment) of the mortgage money, the mortgagee becomes a bare trustee for the mortgagor, and all the provisions of the mortgage deed (including the statutory power of sale) are necessarily at an end, and it is conceived that a purchaser who should buy with knowledge

Whether purchaser could safely complete if he is aware that sale is improper.

Case of oppressive exercise of power.

(*i*) Kershaw *v.* Kalow, 19 Jur. 974.
(*m*) Jenkins *v.* Jones, 2 Giff. 99.

of such a state of circumstances would not be allowed to retain the property.

How power of sale may be exercised.

A second mortgagee may purchase from a first mortgagee selling under his power of sale (*n*); but a mortgagor purchasing under a power of sale in a first mortgage has no title to priority as against his own second mortgagee (*o*). Under the usual power of sale, the mortgagee may sell, subject to a stipulation that a part of the purchase-money may remain on mortgage (*p*).

Position of mortgagee on mortgagor's bankruptcy.

On the bankruptcy of the mortgagor, the mortgagee, whether his mortgage be legal or equitable, may apply to the Court of Bankruptcy, and obtain an order for a sale under the Bankruptcy Orders, 1870 (*q*). The Court will, upon such application, proceed to inquire whether the applicant is a mortgagee, and if so, will take an account of what is due to him for principal, interest, and costs. A sale will then be directed, under the conduct of the trustee, not the mortgagee, and the monies to come from such sale will be applied, first, in paying the costs, charges, and expenses of the trustee of and occasioned by the application to the Court, and attending the sale; secondly, in payment of the principal, interest, and costs due on the mortgage, and the surplus (if any) will be retained by the trustee. If the sale money is insufficient to pay the debt, the mortgagee may prove for the deficiency. But it is not imperative on the mortgagee to apply to the Bankruptcy Court under the above order; he may, if he prefers it, proceed in the Chancery Division of the High Court of Justice for foreclosure, or exercise the power of sale (if any) reserved by the deed, or pursue any other of his ordinary remedies (*r*).

Action on covenant.

Where the property comprised in the mortgage is of ample value to cover the debt, a mortgagee seldom resorts to the covenant for payment of principal and interest, as

(*n*) Parkinson *v.* Hanbury, 1 Dr. & S. 143; Shaw *v.* Bunney, 2 D. J. & S. 468; Kirkwood *v.* Thompson, *ib.* 613.

(*o*) Otter *v.* Lord Vaux, 2 K. & J. 650.

(*p*) Davey *v.* Durrane, 1 De G. & J. 535. See also Thurlow *v.* Mackeson, L. R. 4 Q. B. 97, as to what arrangement amounts to a good exercise of a power of sale.

(*q*) Rules 78 to 81.

(*r*) Rule 78.

the remedy by foreclosure or sale is more complete and efficacious. But if interest has been allowed to remain in arrear for more than six years, there is an advantage in proceeding on the covenant, because twenty years' arrears may be recovered by an action on the covenant, whereas only six years' arrears can be recovered in a foreclosure suit (*s*).

Mortgagee may pursue all his remedies simultaneously.

It is settled that a mortgagee cannot be interfered with in the exercise of any of his powers except on the payment of principal, interest, and costs (*t*); and he may pursue all his remedies at one and the same time, or separately as he may think fit. If pending a foreclosure suit, he sues on the covenant, and obtains full payment, the mortgagor is, by the fact of payment, entitled to redeem, and foreclosure is of course prevented; if a part only of the debt is recovered in the action the mortgagee may foreclose for non-payment of the remainder. If, on the other hand, he obtains foreclosure first, and finds that the value of the estate is not sufficient to cover his debt, he is not precluded from suing on the covenant, so long as the mortgaged estate remains in his power, but by so doing he gives to the mortgagor a renewed right to redeem, or in other words, opens the foreclosure. If, however, the mortgagee has sold the mortgaged estate, and thus prevented himself from restoring it, the court will by injunction restrain him from afterwards suing on the covenant (*u*).

Opening the foreclosure.

Advantage of power to appoint a receiver now conferred by statute.

It is sometimes desired on the part of the mortgagee that he should be placed in a position to obtain regular payment of the interest on his money without taking steps to enforce payment of the principal. With this object, it is provided by the Conveyancing Act, 1881 (*v*), that a mortgagee by deed shall have power, when the mortgage money has become due, to appoint a receiver of the income of the mortgaged property, or of any part

(*s*) See *infrà*.

(*t*) Paynter *v.* Carew, Kay, App. xxxviii.

(*u*) Lockhart *v.* Hardy, 9 Beav. 349; Palmer *v.* Hendrie, 27 Beav. 349; 28 *ib.* 341.

(*v*) Sect. 19.

thereof, and the Act contains the following provisions relating to the appointment of a receiver :—

Appointment, powers, remuneration, and duties of receiver.

Section 24.—(1.) A mortgagee entitled to appoint a receiver under the power in that behalf conferred by this Act shall not appoint a receiver until he has become entitled to exercise the power of sale conferred by this Act, but may then, by writing under his hand, appoint such person as he thinks fit to be receiver.

(2.) The receiver shall be deemed to be the agent of the mortgagor ; and the mortgagor shall be solely responsible for the receiver's acts or defaults, unless the mortgage deed otherwise provides.

(3.) The receiver shall have power to demand and recover all the income of the property of which he is appointed receiver, by action, distress, or otherwise, in the name either of the mortgagor or of the mortgagee, to the full extent of the estate or interest which the mortgagor could dispose of, and to give effectual receipts, accordingly, for the same.

(4.) A person paying money to the receiver shall not be concerned to inquire whether any case has happened to authorize the receiver to act.

(5.) The receiver may be removed, and a new receiver may be appointed, from time to time by the mortgagee by writing under his hand.

(6.) The receiver shall be entitled to retain out of any money received by him, for his remuneration, and in satisfaction of all costs, charges, and expenses incurred by him as receiver, a commission at such rate, not exceeding five per centum on the gross amount of all money received, as is specified in his appointment, and if no rate is so specified, then at the rate of five per centum on that gross amount, or at such higher rate as the court thinks fit to allow on application made by him for that purpose.

(7.) The receiver shall, if so directed in writing by the mortgagee, insure and keep insured against loss or damage by fire, out of the money received by him, any building, effects, or property comprised in the mortgage,

whether affixed to the freehold or not, being of an insurable nature.

(8.) The receiver shall apply all money received by him as follows (namely) :—

(i.) In discharge of all rents, taxes, rates, and outgoings whatever affecting the mortgaged property; and

(ii.) In keeping down all annual sums or other payments, and the interest on all principal sums, having priority to the mortgage in right whereof he is receiver; and

(iii.) In payment of his commission, and of the premiums on fire, life, or other insurances, if any, properly payable under the mortgage deed or under this Act, and the cost of executing necessary or proper repairs directed in writing by the mortgagee; and

(iv.) In payment of the interest accruing due in respect of any principal money due under the mortgage;

And shall pay the residue of the money received by him to the person who, but for the possession of the receiver, would have been entitled to receive the income of the mortgaged property, or who is otherwise entitled to that property.

V. *The powers, duties, and liabilities, of a mortgagee in possession.*

Mortgagee in possession must account to mortgagor,

A mortgagee may, at any time after the day appointed for payment, enter into possession of the mortgaged property, and receive the rents towards payment of his debt. He will have to account to the mortgagor for the rents so received, and he will be responsible for gross and wilful negligence or injury, such as pulling down buildings, &c., but he will be allowed for necessary repairs (*x*). He may take possession of part of the

(*x*) Sandon *v.* Hooper, 6 Beav. 246. In order to entitle a mortgagee in possession to permanent improvements or substantial repairs he must make out a case for them at the trial. Tipton Green Colliery Co.

mortgaged property, leaving the rest in the possession of the mortgagor (*y*).

could not grant binding leases before 1882,

A mortgagee in possession could not, until the recent Act, without an express power, grant leases which would be binding in equity on the mortgagor. But the Conveyancing Act, 1881, sect. 18, confers on mortgagees in possession powers to grant agricultural and occupation leases, and building leases, similar to those given to mortgagors in possession, and which are above referred to.

is bound to deal with property as a prudent owner.

A mortgagee in possession is bound to deal with the property in the same way as a prudent man would deal with his own; he is not bound to engage in, and will not be allowed for, adventures and speculations (*z*). Thus, he must not open mines (*a*), unless the security is insufficient (*b*), and if he comes into possession of mines already open, he will not be liable for not advancing more in the management of them than a cautious owner would spend, as it is not to be expected that he would risk his own fortune in a speculation and incur hazard in an adventure which, if successful, is ultimately to redound to the benefit of the mortgagor (*c*).

May cut and sell timber other than ornamental timber.

A mortgagee in possession, where the mortgage is made after the 31st December, 1881, may cut and sell timber and other trees ripe for cutting, and not planted or left standing for shelter or ornament, and may contract for any such cutting and sale, to be completed within any time not exceeding twelve months from the making of the contract (*d*).

How rents to be applied.

If the net rents received by the mortgagee are more than sufficient to keep down the interest on his debt, the surplus must be applied towards payment of the principal; and a question often arises in what manner the account is to be taken as to such surplus rent, *i.e.*,

Annual rests.

whether annual rests are to be made, and the principal

v. Tipton Moat Colliery Co., 7 Ch. D. 192.

(*y*) Simmins *v.* Shirley, 6 Ch. D. 173.

(*z*) Hughes *v.* Williams, 12 Ves. 493; Cocks *v.* Gray, 1 Giff. 77.

(*a*) Thorneycroft *v.* Crockett, 16 Sim. 445; Hood *v.* Easton, 2 Giff. 692.

(*b*) Millett *v.* Davey, 31 Beav. 470.

(*c*) Rowe *v.* Wood, 2 J. & W. 555.

(*d*) Conveyancing Act, 1881, sect. 19.

to be sunk each year to the amount of the surplus rents, or whether the interest shall be allowed to run on until the whole debt is discharged. It seems to be now settled that an account with annual rests will not be directed, unless at the time when the mortgagee entered into possession no interest was in arrear, as a mortgagee is not bound to receive his money in driblets. If he enters into possession when no interest is due, he shows his intention to receive payment of the debt in driblets, and therefore the account goes with rests; but if the interest is in arrear, the fact of his taking possession affords no evidence of such an intention, as he is driven to take possession by the non-payment of the interest, and therefore the account goes on till the whole debt is satisfied (*e*). But a mortgagee of leaseholds may take possession when there is no arrear of interest, under circumstances which may not render him liable to account with annual rests, as if he enters in order to prevent a forfeiture for non-payment of ground-rent or non-insurance (*f*).

When mortgagee in possession sells part.

But if a mortgagee in possession sells a part of the mortgaged property under a power of sale, he must apply the proceeds first in payment of interest and costs, and then either pay the balance to the mortgagor, or apply it in reduction of principal, and in taking an account against a mortgagee who has retained sale monies beyond the interest and costs due, a rest must be made at the time of the receipt of the proceeds of sale, even though he may have entered into possession when interest was in arrear (*g*).

VI. *The effect of the statutes of limitation as between mortgagor and mortgagee.*

Mortgagee barred of remedy against the land, where mortgagor

According to the statutes of limitation now in force (*h*), a mortgagee allowing the mortgagor to remain in possession of the land, is barred of his right to recover that

(*e*) Nelson *v.* Booth, 3 De G. & J. 119.
(*f*) Patch *v.* Wild, 30 Beav. 99.
(*g*) Thompson *v.* Hudson, L. R. 10 Eq. 497.
(*h*) 3 & 4 Wm. 4, c. 27, secs. 2, 24; 7 Wm. 4 & 1 Vict. c. 28; 37 & 38 Vict. c. 57, sec. 1.

remains in possession, at end of twelve years after last payment or acknowledgment.

possession by an action of ejectment or to bring an action of foreclosure, and of all other remedies against the land, at the expiration of twelve years after the last payment of any part of the principal money or interest secured by the mortgage, unless in the meantime an acknowledgment of the mortgagee's title is given to him or his agent in writing signed by the mortgagor, in which case time runs from the date of the acknowledgment. If there has been no payment of principal money or interest under the deed, and no acknowledgment, the twelve years will run either from the date of the mortgage or from the day fixed for redemption, probably the latter. If a mortgagee obtains an order for foreclosure within the twelve years, he may bring an action of ejectment to recover the possession of the land at any time within twelve years from the date of the foreclosure order, as such an order vests the beneficial ownership in him for the first time (*i*).

By whom principal or interest must be paid in order to prevent the statute from running.

A payment of principal or interest in order to bar the operation of the statute must be by the mortgagor or by some person bound to make such payment on his behalf, and a payment of rent by a tenant of the mortgaged property to the mortgagee in consequence of a notice from the latter is not such a payment (*j*).

Action on covenant to recover principal money must be brought within twelve years after right has accrued, or last payment or acknowledgment.

If the mortgage deed contains a covenant to pay the principal money and interest, an action on the covenant must be brought within twelve years next after the right to receive the same has accrued, unless in the meantime some part of the principal money or some interest thereon has been paid, or some acknowledgment of the right thereto has been given in writing, signed by the person by whom the same is payable, or his agent, to the person entitled thereto or his agent, and in such case time will run from the date of the last payment or acknowledgment (*k*).

Only six years' arrears of interest can be re-

It is provided by sect. 42 of the 3 & 4 Wm. 4, c. 27, that no arrears of interest in respect of any sum of

(*i*) Heath *v.* Pugh, 6 Q. B. D. 345.
(*j*) Harlock *v.* Ashberry, 19 Ch. D. 539.
(*k*) 37 & 38 Vict. c. 57, sec. 8; Sutton *v.* Sutton, W. N. 1882, p. 172.

money charged on land shall be recovered by any distress, action, or suit, but within six years next after the same shall become due, or next after such acknowledgment as therein mentioned. It has been held that this section applies to a foreclosure suit or any other legal proceeding taken by the mortgagee against the land or the proceeds of the land, as *e. g.*, where the purchase-money of land in mortgage has been paid into Court under the Lands Clauses Act, and the mortgagor petitions for payment out to him (*l*).

Limitation of time for recovered against land.

But if the mortgage deed contains a covenant to pay principal and interest, and the mortgagee sues on the covenant, he is not limited to the six years' arrears, but may by virtue of sec. 3 of the Act 3 & 4 Will. 4, c. 42, as modified by sec. 8 of the Act 37 & 38 Vict. c. 57, recover twelve years' arrears.

Twelve years' arrears may be recovered in an action on the covenant.

If the heir of a mortgagor seeks to redeem without paying twenty years' arrears of interest, the mortgagee may tack the covenant against him, so as to be entitled to the same arrears of interest as he might recover in an action on the covenant (*m*). And independently of the doctrine of tacking, it is apprehended that in an action for redemption by the mortgagor himself, or in the event of a mortgagee selling under his power of sale, the right of the mortgagee would not be limited to six years' arrears, as neither of these cases would be within sect. 42, which applies only to an action by the mortgagee (*n*).

The right of the mortgagee in a redemption suit, or on a sale by him under his power of sale, not confined to six years' arrears, *semble*.

Section 42 contains a proviso that where a prior mortgagee has been in possession of the land within one year next before an action brought by a subsequent mortgagee, the latter may recover the arrears of interest which have become due during the whole time that the prior mortgagee has been in possession, although it may have exceeded six years (*nn*). But the fact that the mortgaged property is a reversion or remainder does not prevent the

Rule as to six years' arrears does not apply, where prior mortgagee has been in possession within a year before action,

but does apply where mortgaged land is reversionary.

(*l*) Hunter *v.* Nockolds, 1 M. & G. 641; *Re* Stead's Mortgaged Estates, 2 Ch. D. 713; *In re* Slater's Trusts, 11 Ch. D. 227. See also Clarkson *v.* Henderson, 14 Ch. D. 348.

(*m*) Elvey *v.* Norwood, 5 D. & Sm. 241.

(*n*) Edmunds *v.* Waugh, 1 Eq. 418, disapproving of Mason *v.* Broadbent, 33 Beav. 296. See also *Re* Stead's Mortgaged Estates, 2 Ch. D. 713.

(*nn*) Sec. 42.

six years from running during the continuance of the prior estate (*o*).

Mortgagee not benefited by express trust to secure the money.

Since the recent Act (*p*) a mortgagee gains no advantage as regards the period within which he must pursue his remedies, by the existence of an express trust for securing the money.

An acknowledgment by a mortgagor, or his personal representative, given to a prior incumbrancer, will not entitle that prior incumbrancer to recover, as against a subsequent incumbrancer, more than six years' arrears of interest (*q*).

When mortgagor barred of his equity of redemption.

When a mortgagee has taken possession, the mortgagor's right to redeem will be barred at the end of twelve years from the time of taking possession, unless in the meantime an acknowledgment of the title of the mortgagor, or of his right of redemption, is given to the mortgagor, or some person claiming his estate, or to the agent of such mortgagor or person, in writing, signed by the mortgagee or the person claiming through him, in which case the time will run from the date of the acknowledgment, or the last acknowledgment, if more than one. And the Acts make provision for the case of there being more than one mortgagor or mortgagee (*r*), and an acknowledgment being given to or by one only. Twelve years' uninterrupted possession by the mortgagee without intermediate payment or acknowledgment is an absolute bar as against the mortgagor and all persons claiming under him, although he or they may have been under disability (*rr*).

Right of redemption not revived by subsequent acknowledgment.

Where a mortgagee has been in possession for more than the statutory period without acknowledgment, the right of redemption is extinguished (*s*), and cannot be revived by a subsequent acknowledgment (*ss*).

(*o*) Sinclair *v.* Jackson, 17 Beav. 405; Smith *v.* Hill, 9 Ch. D. 143.

(*p*) 37 & 38 Vict. c. 57, sec. 10.

(*q*) Bolding *v.* Lane, 1 De G. J. & S. 122.

(*r*) 3 & 4 Wm. 4, c. 27, sec. 28; 37 & 38 Vict. c. 57, sec. 7.

(*rr*) Forster *v.* Patterson, Weekly Notes, 1881, p. 32.

(*s*) Sect. 34.

(*ss*) *In re* Alison, 11 C. D. 284; Sanders *v.* Sanders, 19 Ch. D. 373. In the latter case the Court treated Stansfield *v.* Hobson, 3 D. M. & G. 620, which apparently decided the contrary, as of no authority, on the ground that the point seems to have been overlooked.

VII. *The order of liability of the mortgaged property and the general estate of the mortgagor or other person liable to the debt.*

Until recent Act, the personalty was the primary security as a general rule. Exceptions to rule.

Until a recent Act, if a mortgagor died intestate, or by his will showed no contrary intention, his personal estate was liable to the payment of his mortgage debts in exoneration of the land comprised in the mortgage (*t*). This rule, however, only applied where the mortgage debt was originally the debt of the deceased mortgagor; thus, if A. became entitled by descent or purchase to mortgaged land, and afterwards died intestate, his heir took the land *cum onere*, and was not entitled to have it exonerated out of the personal estate, even though upon a transfer of the mortgage in A.'s lifetime he may have covenanted to pay the money (*u*). *A fortiori*, if a person having only a limited interest in land subject to a mortgage entered into a bond or covenant for payment of the debt, the bond or covenant was considered as auxiliary only. Again, the rule would not apply where an intention appeared on the face of the mortgage deed, or could be implied from the dealings with the property, that the land should be the primary security. Thus, where a mortgage was made containing the usual covenant by the mortgagor for payment of the mortgage money, and subsequently the mortgagor settled the property subject to the mortgage upon trust for himself for life, with remainders over, leaving in himself the ultimate reversion in fee which he devised by his will, it was held that his general personal estate was exonerated from the mortgage debt, the Court considering that the subsequent dealing with the property showed the intention of the mortgagor to make the land the primary security (*x*). And where

(*t*) Howell *v.* Price, 1 P. Wms. 291.

(*u*) Evelyn *v.* Evelyn, 2 P. Wms. 664; Bagot *v.* Oughtyn, 1 P. Wms. 347; Woods *v.* Huntingford, 3 Ves. 128, 131; Scott *v.* Beecher, 5 Mad. 96; see also Bond *v.* England, 2 K. & J. 44, where the subject is fully discussed.

(*x*) Lady Langdale *v.* Briggs, 8 De G. M. & G. 391.

property was mortgaged, and was then settled by the mortgagor subject to the mortgage, and with a proviso that the land should be the primary security, and the mortgagor afterwards paid off the debt out of his own money, it was held that the mortgage debt was to be considered as kept on foot for the benefit of his personal estate (*y*).

17 & 18 Vict. c. 113.

By statute 17 & 18 Vict. c. 113, it is enacted that, "When any person shall, after the 31st of December, 1854, die (*z*) seised of or entitled to any estate or interest in any land or other hereditaments which shall at the time of his death be charged with the payment of any sum or sums of money by way of mortgage, and such person shall not by his will or deed, or other document, have signified any contrary or other intention, the heir or devisee to whom such land or hereditaments shall descend or be devised shall not be entitled to have the mortgage debt discharged or satisfied out of the personal estate or any real estate of such person, but the land or hereditaments so charged shall as between the different persons claiming through or under the deceased person be primarily liable to the payment of all mortgage debts with which the same shall be charged, every part thereof according to its value bearing a proportionate part of the mortgage debts charged on the whole thereof." And the Act contains a proviso that nothing therein contained shall affect the rights of any person claiming under or by virtue of any will, deed, or document made before the 1st of January, 1855 (*a*).

Construction of the above Act.

On the construction of this Act, it was held by Lord Campbell, in *Woolstencroft* v. *Woolstencroft* (*b*), that a direction in a will that all the testator's debts should be paid by his executors *out of his estate*, followed by a gift of all the testator's real and leasehold estates (which were subject to a mortgage) to trustees who with the

(*y*) Pears *v.* Wrightman, 2 Jur. (N. S.) 586.

(*z*) As to what is not an interest in land within the meaning of this Act, see Lewis *v.* Lewis, L. R. 13 Eq. 218.

(*a*) As to the construction of this proviso, see Nelson *v.* Page, L. R. 6 Eq. 25.

(*b*) 2 De G. F. & J. 347 ; see also Coote *v.* Lowndes, L. R. 10 Eq. 376.

testator's wife were also named executors, was not such an expression of contrary intention as to bring the case within the saving of the Act, and consequently that the *cestuis que trust* under the will of the real estate and leaseholds took them *cum onere*. In *Mellish* v. *Vallens* (*c*), it was held by Vice-Chancellor Wood that a bequest of personalty *subject to the payment thereout of all the testator's debts*, following a devise of land in mortgage, was sufficient indication of a contrary intention to bring the case within the saving of the Act. In the course of his judgment, the Vice-Chancellor commented on *Woolstencroft* v. *Woolstencroft*, and distinguished that case from the one before him on the ground that in the former case the debts were directed to be paid out of the testator's estate generally, without confining it to the *personal* estate (*d*). A direction that the testator's debts and funeral and testamentary expenses shall be paid out of his personal estate in exoneration of his real estate does not exclude the application of the Act (*dd*).

Applies to equitable mortgages.

The Act was held to apply to an equitable mortgage by deposit and memorandum (*e*), although the same might have been additionally secured by the debtor's promissory note (*f*); but not to the lien of a vendor for unpaid purchase-money (*g*), nor to leaseholds (*h*). Where real estate and also property to which the Act does not apply are the subjects of the same mortgage, in the administration of the mortgagor's estate the real estate would have to bear such proportion of the mortgage debt as the value of such real estate bears to the value of the whole of the mortgaged property (*i*). So also where two estates are subject to the same mortgage, and one of them is specifically devised and the other passes under

(*c*) 2 John. & Hem. 194.

(*d*) See also Smith *v.* Smith, 3 Giff. 274; Greated *v.* Greated, 26 Beav. 621; Allen *v.* Allen, 30 Beav. 395; Hepworth *v.* Hill, *ib.* 476; Eno *v.* Tatam, 4 Giff. 181; 9 Jur. N. S. 481; Moore *v.* Moore, 1 De G. & S. 602; Brownson *v.* Lawrence, L. R. 6 Eq. 1; Elliott *v.* Dearsley, 16 Ch. D. 322; Rowson *v.* Harrison, 31 Beav. 207, seems to be overruled.

(*dd*) Rossiter *v.* Rossiter, 13 Ch. D. 355.

(*e*) Pembroke *v.* Friend, John. & Hem. 132.

(*f*) Coleby *v.* Coleby, L. R. 2 Eq. 803.

(*g*) Hood *v.* Hood, 26 L. J. (N. S.) Ch. 616.

(*h*) Solomon *v.* Solomon, 33 L. J. Ch. 473.

(*i*) Trestrail *v.* Mason, W. Notes, 1878, p. 13.

a residuary devise, the two estates must rateably bear the mortgage debt (*j*).

30 & 31 Vict. c. 69.

As to the wills of persons dying after the 31st of December, 1867, it is enacted by the 30 & 31 Vict. c. 69, that a general direction that the debts of the testator shall be paid out of his personal estate shall not be deemed to be a declaration of an intention contrary to or other than the rule established by the 17 & 18 Vict. c. 113, unless such contrary or other intention shall be further declared by words expressly or by necessary implication referring to all or some of the testator's debts or debt charged by way of mortgage on any part of his real estate (*k*); and such a contrary intention is not indicated by the testator directing his real and personal estate to be converted into money and his debts to be paid out of the proceeds as a mixed fund (*k k*). By section 2 it is provided that in the construction of the Act the word mortgage shall extend to any lien on unpaid purchase-money in lands and hereditaments purchased by *a testator*. If, then, a freehold or copyhold estate is contracted to be sold, and the purchaser dies before the whole of the purchase-money is paid, and by his will he makes a general or specific devise of such estate, the purchased estate will be the primary fund for the discharge of the unpaid purchase-money. If, however, the purchaser died before the 31st December, 1877, intestate, his personal estate was the primary fund for this purpose (*l*).

40 & 41 Vict. c. 34.

As to any testator or intestate dying after the 31st December, 1877, it is enacted by the 40 & 41 Vict. c. 34, that the Acts of the 17 & 18 Vict. c. 113, and the 30 & 31 Vict. c. 69, shall be held to extend to a testator or intestate dying seised or possessed of or entitled to any land or other hereditaments of whatever tenure which shall at the time of his death be charged with the payment of any sum or sums by way of mortgage, or any

(*j*) Gibbins *v.* Eyden, L. R. 6 Eq. 371; but see *contra* Brownson *v.* Lawrence, *ubi suprà*. See Leonino *v.* Leonino, 10 Ch. D. 460.

(*k*) Sec. 1. See Sackville *v.* Smith, L. R. 17 Eq. 153; Newmarch *v.* Storr, 9 Ch. D. 12.

(*k k*) Elliott *v.* Dearsley, 16 Ch. D. 322.

(*l*) Harding *v.* Harding, L. R. 31 Eq. 493.

other equitable charge, including any lien for unpaid purchase-money, and that the devisee, legatee, or heir shall not be entitled to have such sum or sums discharged or satisfied out of any other estate of the testator or intestate, unless (in the case of a testator) he shall within the meaning of the said Acts have signified a contrary intention, and that such contrary intention shall not be deemed to be signified by a charge of or direction for payment of debts upon or out of residuary real and personal estate, or residuary real estate.

Construction of Acts.

The result of the above enactments is that as regards a mortgagor of freehold, copyhold, or leasehold property dying after the 31st December, 1877, or a purchaser of any such property dying after that date without having paid the whole of the purchase-money, the property will be the primary fund for payment of the mortgage debt or the unpaid purchase-money, as the case may be, whether such mortgagor or purchaser has died intestate or has disposed of the property by his will, unless in the latter case the will contains an expression of a contrary intention within the meaning of the 17 & 18 Vict. c. 113, and the Amendment Acts. If in the cases put, freeholds or copyholds and leaseholds are together made the subject of mortgage or contract, the burden must be borne by the respective estates according to their respective value.

Primary liability of husband on mortgage of wife's land.

Upon a mortgage by a husband and wife of the wife's land, where the money is received by the husband, the husband and his estate are primarily liable (*m*). If the deed expresses that the money is paid to the husband and wife, that is *primâ facie* a payment to the husband; but it may be shown by extrinsic evidence that the payment was in fact for the benefit of the wife, and in that case the land will be primarily liable (*n*).

(*m*) Tate *v.* Austen, 1 P. Wms. 264; Pocock *v.* Lee, 1 Vern. 604; see Scholefield *v.* Lockwood, 33 L. J. Ch. 106.

(*n*) Hudson *v.* Carmichael, Kay, 613; Clinton *v.* Hooper, 1 Ves. Jun. 173; Earl of Kinnoul *v.* Money, 3 Swanst. 202, 211, note.

VIII. *Mortgages under powers, including mortgages by executors.*

Preparation of mortgages under powers.

When mortgages are made in pursuance of powers, it is important to consider what provisions may be introduced into the deed, consistently with the terms of the power. In *Clarke* v. *The Royal Panopticon* (*o*), *Kindersley*, V.-C., held that under a power to mortgage without more, the donee of the power could not give the mortgagee a power of sale in case of default. But this case may be considered to be overruled by more recent authorities which decide that a power of sale is an ordinary incident to a mortgage, and that a power to mortgage includes a power to give a mortgagee all such remedies as are proper to be given to him, and that one of these remedies is a power of sale (*p*); and by the recent Act a power of sale is made incident to every mortgage, including (it is apprehended) one made under a power. It is desirable to provide in the instrument creating the power to mortgage that the costs and expenses of and attending the security may be added to and included in the amount to be raised, and that the mortgagee shall not be concerned to see that the money advanced is required for the purpose for which it is expressed to be borrowed.

Executor may sell or mortgage personalty.

An executor or administrator has an absolute power of disposal over the personal property of the testator or intestate, including his chattel interests in land. He may, therefore, either sell or mortgage the same (*q*), and the mortgagee need not inquire of the executor or administrator as to debts or legacies, but he should, if possible, obtain the concurrence of the legatee where the property is specifically bequeathed, lest the executor or administrator should have made a previous assent to the legacy.

Executor may give power of sale to mortgagee.

An executor or administrator may not only mortgage the assets, but may give to the mortgagee a power of

(*o*) 4 Drew. 26.

(*p*) Bridges *v.* Longman, 24 Beav. 27; Cook *v.* Dawson, 29 Beav. 123, 128; *In re* Chawner's will, L. R. 8 Eq. 569.

(*q*) See 2 Wms. on Executors, p. 873; see Earl Vane *v.* Rigden, L. R. 5 C. A. 663.

sale (*r*), and where a mortgage is made of an infant's real estate under an order of the Court, a power of sale may be inserted, because better terms can be thus obtained in raising the money (*s*).

IX. *The rights and priorities of several mortgagees and incumbrancers amongst themselves, the protection afforded to purchasers and mortgagees against concealed trusts and incumbrances by the possession of the legal estate, the doctrine of tacking, notice actual and constructive, and the consequence of laches on the part of a mortgagee, particularly in reference to the title deeds.*

Cases in which questions of priority arise.

It sometimes happens that the same property is made the subject of several mortgages, the fact of the prior incumbrances being concealed from each subsequent mortgagee, or that a sale or mortgage is made by a person who is a trustee without power to sell or mortgage, or who is affected by notice of prior trusts or incumbrances, or whose title is otherwise defective in equity, to a person who has no knowledge of such circumstances. In these cases questions of priority arise, in the former, as between the successive mortgagees, and in the latter, as between the purchaser or mortgagee on the one hand, and the persons whose rights are prejudiced by the sale or mortgage on the other hand.

Rules applicable to such questions.

In determining such questions, two rules must be borne in mind. The one is, that where the equities are equal, the person who has the legal estate will prevail (*t*); and the second is, that as between persons having only equitable interests, if these equities are in other respects equal, priority of time gives the better equity, for *qui prior est tempore potior est jure* (*u*).

(*r*) Russell *v.* Place, 18 Beav. 21; Cruikshank *v.* Duffin, L. R. 13 Eq. 555.

(*s*) Selby *v.* Cooling, 26 Beav. 418.

(*t*) Francis' Maxims, Max. 1; 2 Fonblanque on Equity, 302.

(*u*) Rice *v.* Rice, 2 Drew. 73.

Purchaser without notice may protect himself against trusts, &c., by legal estate.

It has long been settled that if a person being a trustee on an express trust, or being affected by notice of a trust or incumbrance, conveys the legal estate to a purchaser or mortgagee for valuable consideration who has no notice, the latter is protected from such trust or incumbrance by the possession of the legal estate, and acquires an indefeasible title both at law and in equity, so that he may himself afterwards effectually sell or mortgage even to persons who have notice (*x*). And the protection of the legal estate extends to cases where the vendor or those from whom he claims is or are guilty of gross fraud. Thus in *Jones* v. *Powles* (*y*), Jones mortgaged to Holbrook, and afterwards paid off the mortgage, but took no reconveyance, so that Holbrook became a trustee for Jones;—Jones afterwards died, and Meredith produced a document purporting to be the will of Jones, devising all his property to Meredith, but which document was in fact forged by him. Meredith borrowed money from Hall, and Holbrook, by the direction of Meredith, conveyed the legal estate by way of mortgage to Hall to secure the advance, and this mortgage, by virtue of several *mesne* conveyances, became ultimately vested in Powles, who took possession. Upon a bill afterwards filed by the heiress at law of Jones, it was held that Powles had a good security by virtue of the possession of the legal estate for the money due to her.

Even in case of fraud.

Doctrine stated by Gilbert.

In Gilbert's "Lex Prætoria" (*a*), the equitable right of a purchaser for valuable consideration is stated thus: "If B. obtains a conveyance of land from A. by fraud, and A. quits the possession to B., and B. sells the land to C. for valuable consideration *bonâ fide* and without notice, A. can never obtain the land against C., because the fraudulent conveyance with the quitting the possession transfers an interest, and that when C. has obtained an interest at law for his money *bonâ fide*, a court of equity ought not to take it from him."

(*x*) Ferrers *v.* Cherry, 2 Vern. 383; Mertins *v.* Jolliffe, Ambl. 313: Sweet *v.* Southcote, 2 B. C. C. 66; Macqueen *v.* Farquhar, 11 Ves. 478.

(*y*) 3 M. & K. 581. See also Newton *v.* Newton, L. R. 4 C. A. 143; Young *v.* Young, L. R. 3 Eq. 1; Pilcher *v.* Rawlins, L. R. 7 C. A. 250. This last case overrules Carter *v.* Carter, 3 K. & J. 617.

(*a*) Frauds, p. 287.

It follows from what has been stated that if B. takes a conveyance or mortgage of the legal estate from A. under circumstances which would make the transaction impeachable in equity as against B., either by A. himself, or by some person for whom A. is a trustee, and B. subsequently conveys the legal estate to C. as a purchaser for valuable consideration, and without notice, either actual or constructive, of such circumstances, C.'s title cannot be impeached. Thus if A., being a mortgagee with a power of sale, sells to B. under circumstances which would enable A.'s mortgagor to set aside the sale as against B., and B. subsequently sells or mortgages to C., who has no notice of such circumstances, C. is protected by the possession of the legal estate. Again, if a purchase by B. from A. is liable to be set aside as between those parties on the ground that B. was A.'s solicitor, and B. previously to any suit instituted for that purpose sells and conveys the legal estate to C. who has no notice, either actual or constructive, of the relation of solicitor and client existing between A. and B., it is conceived that C. in this case also has an indefeasible title (*z*). Some cases to which rule applies

The protection of the legal estate is not confined to cases where a purchaser or mortgagee acquires such legal estate at the time of his purchase or mortgage, or before he has notice of the prior trust or incumbrance (*zz*). Thus a third mortgagee advancing his money without notice of a second mortgage, may, by paying off a first mortgagee who has the legal estate, and taking a transfer from him of such first mortgage, hold the property as against the second mortgagee until not only the first mortgage but also the third is paid off; in other words, may tack the two debts together, and thus, as it were, squeeze out the second (*a*). Tacking.

But a purchaser or mortgagee, who, after completing his purchase or mortgage, becomes aware that the legal Purchaser taking legal estate from

(*z*) See accordingly Bainbridge *v.* Browne, W. N. 1881, p. 92.

(*zz*) Stanhope *v.* Earl Verney, 2 Eden, 85; see also Willoughby *v.* Willoughby, 1 T. R. 763; Butler's note to Co. Lit. 390 b.

(*a*) March *v.* Lee, 1 Ch. Ca. 162; 2 Vent. 337; Churchill *v.* Grove, 1 Ch. Ca. 36; Edmunds *v.* Povey, 1 Vern. 187; Bovey *v.* Skipwith, 1 Ch. Ca. 201; Peacock *v.* Burt, 4 Law J. (N. S.) Ch. 33; Spencer *v.* Pearson, 24 Beav. 266; Bates *v.* Johnson, 1 John. 304.

express trustee with notice, not protected.

estate is vested in a trustee upon express trusts, cannot protect himself against such trusts by taking a conveyance of the legal estate from the trustee; for by taking a conveyance with notice of the trusts, he himself becomes the trustee, and must not, to get a plank to save himself, be guilty of a breach of trust (*b*).

Third mortgagee taking a conveyance from first mortgagee who has been previously paid off, not protected.

It follows that if a first mortgagee, after his mortgage has been satisfied, conveys the legal estate to a third mortgagee, and at the time of such conveyance the third mortgagee has notice of a second mortgage, the third mortgagee, though he had no notice of the second mortgage when he advanced his money, does not by such transaction obtain priority, the distinction between such a case and the ordinary case of tacking being this: It is no breach of duty in a first mortgagee who is unsatisfied to transfer his mortgage to any person who pays him off, and he may therefore transfer it to the third mortgagee, but if the first mortgagee has been satisfied, he thereby becomes a trustee for the second, and it is a breach of duty in him to convey the legal estate to the third, who, being aware of such breach of duty, will not be allowed to profit thereby (*c*).

Conveyance being a breach of trust, no protection, even though grantee has no notice of the trust, *emble*.

And in some recent cases, the opinion of the Court seems to have been, that a purchaser or mortgagee who at the time of completion acquires a defective title, cannot avail himself of a subsequent conveyance of the legal estate from a person who being a trustee for another commits a breach of trust in so conveying, even if the person taking the conveyance has no notice of the trust (*d*).

How far protection of legal estate applies to transferee of a mortgage.

In the application of the doctrine as to the protection afforded by the legal estate to the transferee of a mortgage, it must be borne in mind that a mortgage is regarded in equity as a mere security for a debt, and consequently that the interests of persons claiming under

(*b*) Saunders *v.* Dehew, 2 Vern. 271; Allen *v.* Knight, 5 Hare, 272; see also Willoughby *v.* Willoughby, 1 T. R. 763; Maundrell *v.* Maundrell, 10 Ves. 246; *Ex parte* Knott, 11 Ves. 609; Mumford *v.* Stohwasser, L. R. 18 Eq. 556; Harpham *v.* Shacklock, 19 Ch. D. 207.

(*c*) See Bates *v.* Johnson, 1 John. 301.

(*d*) Mayfield *v.* Burton, L. R. 17 Eq. 15; Mumford *v.* Stohwasser, *ib.* 18 Eq. 557.

a mortgage in the land comprised therein are regulated by their interests in the debt for which the land is a security. If, then, B., by fraud, induces A. to execute to him a mortgage, no money passing from B. to A., and no debt being in fact contracted, and if B., without the concurrence of A., subsequently transfers such mortgage to C., for valuable consideration, it is conceived that C. is in no better position than B., for as no debt was due to B., no debt passes to C.; and as the land was not the subject of the transaction, but the debt for which the land was only a security, C. cannot retain the land as against A. where there is no debt (*e*). Again, if A. mortgages land to B., who knows that A. is a trustee without a power to mortgage, or having such power is improperly exercising it, no debt is created as against the land and the beneficial owners of it. If, then, B. afterwards transfers such mortgage to C. without the concurrence of A., C., though without notice of the trust, can only stand in the shoes of B., and will not be allowed to retain the land against the *cestuis que trust* of A. Thus, in *Burt* v. *Trueman* (*f*), Pemberton, the trustee of a will with a power to raise money by mortgage for payment of debts, deposited the title deeds relating to lands of the testator with Holloway, under circumstances which, in the opinion of the Court, constituted notice to him that the money was raised for Pemberton's private purposes. Afterwards Holloway transferred his equitable security to Trueman, who subsequently applied to Pemberton for, and obtained a legal mortgage in pursuance of the original agreement. Trueman had no notice, either when he advanced his money or took the legal mortgage, of the improper application of the original advance, and nevertheless the mortgage in his hands was held to be invalid as against the *cestuis que trust* under the will. The Vice-Chancellor observed that the equitable security was certainly bad in the hands of Holloway against the *cestuis que trust*. "Suppose, then," he said,

Transferee of a mortgage can be in no better position than transferor.

Burt v. Trueman.

(*e*) See Parker *v.* Clarke, 30 Beav. 54; Rolt *v.* White, 31 Beav. 520.

(*f*) 6 Jur. (N. S.) 72. See also Parker *v.* Clarke, 30 Beav. 54; Adsett *v.* Hives, 33 Beav. 52.

"that a bill had been filed by the present plaintiff against Trueman, could he have maintained that mortgage, he standing simply in the shoes of Holloway? Trueman could not have maintained it more than Holloway, and if the security was one that he could not maintain at first, the taking the legal estate merely in consequence of a prior contract did not enable him to do so. It is not necessary to consider what would be the position of Trueman if he had been asked to advance money for the first time to Pemberton, on the representation that Pemberton wanted the money to pay debts." It will be observed that in this case no debt was created by the transaction with Holloway as against the land and its beneficial owners; no debt, therefore, passed by the transfer to Trueman, and the subsequent getting in of the legal estate was merely an acquisition of a further security in pursuance of the original contract for a debt which did not in fact exist.

Distinction where mortgagor joins in transfer or mortgagee sells under power of sale.

But where the mortgagor joins in the transfer of a mortgage, it is conceived that the transaction is to be treated as a new one, and that the transferee is not affected by any equitable right binding the original mortgagee, of which he (the transferee) has not himself notice. Again, if B., a mortgagee with notice of a prior trust or incumbrance, sells under a power of sale in the mortgage deed to C., who has no notice, it is conceived that as the land which is the subject of the transaction passes to C. by the deed, C. can hold the land free from any right of redemption on the part of the prior *cestui que trust* or incumbrancer.

Where neither party has legal estate, priorities of incumbrances are according to their dates.

It will be borne in mind that the possession of the legal estate is essential to give to a purchaser or mortgagee priority over trusts or incumbrances of which he has no notice; so that where the interests of all of several incumbrancers are equitable only, either by reason of the legal estate being outstanding, or from the property being of an equitable nature, then if the equities of all parties are in other respects equal, *i.e.*, if there are no special circumstances entitling one of the parties in preference to another to the assistance of the Court, the in-

cumbrances will rank according to their order of date (*g*). In such a case the rule *qui prior est tempore potior est jure* applies. Thus, if a mortgagee of an equitable estate, who is in fact a trustee, though not so expressed in the mortgage deed, fraudulently transfers the mortgage to another for valuable consideration, the transferee will take, subject to the claims of the *cestuis que trust*, assuming that the latter have not been guilty of negligence (*h*). And there can be no tacking where all the incumbrances are equitable, so that a third mortgagee gains no advantage by taking a transfer of the first mortgage, where the legal estate is outstanding.

But if one party has by negligence conduced to a fraud, he will be postponed.

But if the party whose right is prior in time has, by his own negligence, conduced to the fraud committed on the other, he will be postponed, as in such case his equity is inferior. Thus, when A. was induced by his solicitor to execute a deed, which was, in fact, a conveyance to the solicitor as on a sale, and to sign the receipt for the purchase-money endorsed on the deed, trusting to his statement that the deed was a mere form, and afterwards the solicitor deposited the title deeds with B. by way of equitable mortgage to secure a debt, B. was held to have priority over A. (*i*). It was argued that the deed, having been executed by A. under a misapprehension as to its contents, was a nullity, and some decisions of V.-C. Stuart were cited in support of this view (*k*); but the Court considered that a man who signs a deed negligently cannot treat it as void as against a third person, who innocently, and without any negligence on his part, acts on the deed so signed, and that a man who chooses to trust implicitly to his agent ought to suffer, rather than the stranger who deals with the agent.

First mortgagee may not tack for further advances after notice of a second mortgage.

Before leaving the subject of tacking it may be stated that if a mortgage is made to secure a specific sum and future advances, and such mortgage is followed by a

(*g*) Brace *v.* Duchess of Marlborough, 2 P. W. 493, 7th Resolution.

(*h*) Cory *v.* Eyre, 1 De J. & G. 149.

(*i*) Hunter *v.* Walters, L. R. 7 Ch. 75.

(*k*) Vorley *v.* Cooke, 1 Giff. 230; Ogilvie *v.* Jeaffreson, 2 Giff. 353; Lee *v.* Angus, Nov. 20, 1866.

second incumbrance, the first mortgagee would not be entitled to priority in respect of further advances made by him after notice of the second mortgage, although the second mortgage was made with notice of the prior mortgage (*l*).

Notice actual and constructive.

Notice may be either actual or constructive. As to *actual* notice nothing need be said; but a purchaser or mortgagee is often chargeable with the consequences of notice from the existence of circumstances which render it his duty to make inquiries, in which case he is deemed to have knowledge of the facts to which those inquiries ought to lead him. Thus notice that the title deeds are in the hands of a third party is notice of his charge on the property. When a purchaser is referred for information to another, it is his duty to make the proper inquiries of such person, and he would be held responsible for the information he might have gained by making the inquiries (*m*). Notice of a particular instrument is notice of all instruments and facts which may be disclosed by that deed (*n*). So also notice of a lease is notice of the covenants and provisions contained in the lease (*o*); and a purchaser or lessee is not protected from the consequences of not inspecting it, notwithstanding the express representation on the part of the vendor or lessor that the lease contains no restricted covenants (*oo*). Notice of the property being in the occupation of a particular person is notice of the interest of that person, and inquiry must be made as to the tenancy and the agreement under which he holds (*p*). In fact, whatever should put the purchaser or mortgagee on inquiry is notice, and he would also be held to have constructive notice in any case in which he has designedly abstained from making inquiries for the purpose of avoiding notice (*q*).

(*l*) Shaw *v.* Neale, 19 Jur. 666; Rolt *v.* Hopkinson, 3 De G. & J. 177; 34 L. J. Ch. 468.

(*m*) Wason *v.* Wareing, 15 Beav. 151.

(*n*) Coppin *v.* Fernyhough, 2 Br. C. C. 291; Eland *v.* Eland, 1 Beav. 235; Davies *v.* Thomas, 2 Y. & C. 234; 16 Beav. 388.

(*o*) Hall *v.* Smith, 14 Ves. 433.

(*oo*) Patman *v.* Harland, 17 Ch. D. 353.

(*p*) Allen *v.* Anthony, 1 Mer. 282; Meux *v.* Maltby, 2 Swanst. 281; James *v.* Lichfield, L. R. 9 Eq. 51; Cavender *v.* Bulteel, *ib.* 9 Ch. 79; Phillips *v.* Miller, *ib.* 9 C. P. 196.

(*q*) Jones *v.* Smith, 1 Hare, 55.

Purchaser should require vendor or lessor to deduce a reasonable title.

It is the duty of a purchaser or of a person taking a lease to require the vendor or lessor to deduce and show a reasonable title, and if he neglects to do so he will be affected with constructive notice of the contents of any deed forming part of the chain of title. It has been held that this rule has not been altered as regards leaseholds by the Vendor and Purchaser Act, 1874, but that a lessee is in the same position with regard to notice as he would have been in if before the Act he had stipulated not to inquire into the lessor's title (*qq*).

Notice of charge.

Notice of a charge is notice of everything auxiliary to it, but if the same deed contains two charges of two distinct properties, a notice given of one charge is not notice of the other (*r*).

Notice to solicitor notice to client.

As a general rule, a person is deemed to have notice of all facts which come to the knowledge of his solicitor in the course of the same transaction (*s*); but as the doctrine is founded on the presumption that a solicitor communicates such facts to his clients, it does not apply where the fact with notice of which the client is sought to be charged is one which the solicitor would certainly conceal, as, *e.g.*, a fraudulent act of his own (*t*). When the mortgagor is himself a solicitor and prepares the mortgage deed, the mortgagee employing no other solicitor, the mortgagor will be considered the agent of the mortgagee in the transaction (*u*).

What notice purchaser is and is not to be affected by.

Section 3 of the Conveyancing Act, 1882 (which is made to apply to purchases made either before or after the commencement of the Act), provides that a purchaser shall not be prejudicially affected by notice of any instrument, fact, or thing, unless (1) it is within his own knowledge if such inquiries and inspections had been

(*qq*) Patman *v.* Harland, 17 C. D. 353. It seems a strange doctrine that a purchaser is to be deemed guilty of negligence for not negativing the operation of an Act of Parliament.

(*r*) *Re* Bright's Trusts, 21 Beav. 430.

(*s*) Lowther *v.* Carlton, 2 Atk. 242; Worsley *v.* Earl of Scarborough, 3 Atk. 392; Hiern *v.* Mill, 13 Ves. 120.

(*t*) Kennedy *v.* Green, 3 M. & K. 699. But see the observations of Chelmsford, L. C., in Espin *v.* Pemberton, 3 De G. & J. 554, as to the notice supposed to be received by a client through his solicitor.

(*u*) Hewitt *v.* Loosemore, 9 Hare, 449; Espin *v.* Pemberton, 4 Drew. 333.

made as ought reasonably to have been made by him, or (2), in the same transaction with respect to which a question of notice to the purchaser arises or has come to the knowledge of his counsel as such or of his solicitor or other agent as such, or would have come to the knowledge of his solicitor or other agent as such if such inquiries and inspections had been made as ought reasonably to have been made by the solicitor or other agent.

This section does little more than express the existing equitable doctrine of notice, and would not, it is apprehended, protect a purchaser when he has entered into a contract under which he is expressly or (assuming *Patman* v. *Harland* to be good law) by statute precluded from calling for the title previous to a particular date.

Priority may be lost by mortgagee's laches.

It will be observed that neither the possession of the legal estate nor priority in point of time will secure to a mortgagee a preference over a subsequent mortgagee if the former by his wilful negligence puts it in the power of the mortgagor to commit a fraud on the latter. In such a case the prior mortgagee has an inferior equity, and although he may have the legal estate, will be postponed to the subsequent mortgagee.

Consequence to mortgagee of not inquiring for title deeds.

It is the duty of a mortgagee to take care that the title deeds are delivered to him, or at all events that some good and apparently sufficient reason is given for their non-delivery, and if he omits all inquiry as to the deeds, he incurs a double risk. First, he is liable to be postponed to a prior equitable mortgagee holding the deeds, on the ground of constructive notice, for had he inquired for the deeds, such inquiry would probably have led to the discovery of the prior mortgage; and secondly, he will be postponed to a subsequent mortgagee, who may advance his money in ignorance of the prior mortgage, and to whom the deeds may be delivered, on the ground that the negligence of such prior mortgagee in leaving the deeds in the mortgagor's possession has enabled or assisted the latter to commit a fraud on the subsequent mortgagee (*x*). In *Hewitt* v. *Loosemore* (*y*),

Hewitt *v.* Loosemore.

(*x*) Layard *v.* Maud, L. R. 4 Eq. 397, and the cases there cited; Spencer *v.* Clarke, 9 Ch. D. 137.

(*y*) 9 Hare, 449.

it was laid down that a legal mortgagee will not be postponed to a prior equitable one on the ground of his not having got the title deeds, unless there be on his part fraud, or gross or wilful negligence, and the Court will not impute fraud or gross or wilful negligence, if he has *bonâ fide* inquired for the deeds, and a reasonable excuse has been given for the non-delivery of them, but if he omits all inquiry as to the deeds, then fraud, or gross or wilful negligence will be imputed.

What constitutes negligence as to deeds.

A mortgagee will not be postponed if he inquires for certain deeds, and the mortgagor assures him that they do not relate to the estate in question (*z*). In a case where the mortgagor borrowed the lease of the mortgagee, in order that he might see its contents, a purchaser from the mortgagor did not gain priority over the mortgagee, although he obtained possession of the lease without notice of the incumbrance (*a*). But in a case where a mortgagor asked the mortgagee for a loan of the deeds for a particular purpose, and promised to return them forthwith, but the mortgagee did not apply for the deeds for four years, and the mortgagor in the meantime raised a sum on the deposit of those deeds, it was held that the first mortgagee had no equity against the second mortgagee, as he had by his laches enabled the mortgagor to commit a fraud (*b*). So where a mortgagee of leaseholds lent the lease to the mortgagor to enable him to raise money upon it, but at the same time told the mortgagor to inform the person from whom he proposed to borrow the money that the mortgagee had a prior charge, the bankers who advanced money on the security of a deposit of the lease without notice of the first mortgage, were held to have priority over that mortgage (*c*).

Colyer v. Finch.

In *Colyer* v. *Finch* (*d*), a legal mortgage was executed of an estate, and the solicitor who was acting for the

(*z*) Jones *v.* Smith, 1 Ph. 244.

(*a*) Martinez *v.* Cooper, 2 Russ. 19.

(*b*) Waldron *v.* Sloper, 1 Drew. 193.

(*c*) Briggs *v.* Jones, L. R. 10 Eq. 92. See also Hunter *v.* Rawlins, L. R. 11 Eq. 292.

(*d*) 5 Ho. of L. Cases, 905.

mortgagor and mortgagee, handed over to the latter certain documents representing them to be the title deeds, but which turned out to be false; afterwards the mortgagor sold the estate to a purchaser without notice of the previous incumbrances; and it was held that the mortgagee's priority was not affected by the subsequent sale. In another case a solicitor mortgaged two properties to his client and sent him a parcel of deeds, together with a memorandum to the effect that the deeds related to both the properties comprised in the mortgage. Subsequently the mortgagor sold one of the properties to a purchaser for value without notice of the mortgage, and handed over to him the title deeds which related to this property, and which in fact the mortgagor had never handed to the mortgagee. The mortgagee relying on the truth of the memorandum did not examine the parcel, and it was held that he could not be postponed on the ground of non-possession of the deeds, as there had not been fraud or wilful negligence on his part in not obtaining them (*e*). So where a solicitor deposited certain title deeds with a client by way of equitable mortgage, omitting the latter deeds which showed the depositor's title, and he afterwards deposited such later deeds with his bankers as an equitable security, it was held that the client had priority (*f*). In *Espin* v. *Pemberton* (*g*), the mortgagee, who was an articled clerk of the mortgagor, asked for the deeds, and was put off by the latter saying that he could not at the moment lay his hands upon them, but that the mortgagee should have them; and he was not under the circumstances postponed to a prior equitable mortgagee (*h*). And in a recent case an equitable mortgagee, with whom some of the title deeds, including the conveyance to the mortgagor, were deposited, filed a bill to establish his priority over a subsequent legal mortgagee whose solicitor had

(*e*) Hunt *v.* Elmes, 28 Beav. 631.

(*f*) Roberts *v.* Croft, 2 De G. & J. 1.

(*g*) 4 Drew. 33.

(*h*) See also Atterbury *v.* Wallis, 7 De G. M. & G. 454; Rayne *v.* Baker, 1 Giff. 241; Carter *v.* Carter, 3 K. & J. 615; Perry Herrick *v.* Attwood, 2 De G. & J. 21; Lloyd *v.* Attwood, 2 K. & J. 614; Hopkins *v.* Amery, 2 Giff. 293; Dowle *v.* Saunders, 2 H. & M. 242.

omitted to examine a parcel which was given him previously to the execution of the mortgage deed, and purported to contain all the title deeds, but contained only the earlier deeds, and it was held that there was not such negligence as to fix the legal mortgagee with notice of the prior charge, and therefore that such legal mortgagee must have priority over the previous equitable mortgagee (*i*).

Indorsement of receipt before payment.

Where a vendor conveyed without receiving his purchase-money, but the receipt of it was indorsed on the deed, and the title deeds were delivered to the purchaser, who afterwards deposited the deeds by way of equitable mortgage, and the mortgagee had no notice of the purchase-money being unpaid; it was held, as between the vendor's lien and the equitable mortgage, that the possession of the title deeds and the fact of the indorsement of the receipt on the deed, gave the mortgagee the better equity (*k*).

Consequence of not giving notice on assignment of choses in action, &c.

Where the subject of an assignment is a chose in action or personalty vested in a trustee, it is the duty of the assignee to give notice to the debtor or to the trustee, as the case may be, and if he neglects to do so, he will be postponed to a subsequent assignee for value who takes this precaution.

Legal choses in action may now be absolutely assigned at law.

As regards a legal chose in action, it is provided by the "Judicature Act, 1873" (*l*), that any absolute assignment by writing, under the hand of the assignor (not purporting to be by way of charge only), of any debt or other legal chose in action, of which express notice in writing shall have been given to the debtor, trustee, or other person from whom the assignor would have been entitled to receive or claim such debt or chose in action shall be, and be deemed to have been, effectual in law (subject to all equities which would have been entitled to priority over the right of the assignee if this Act had not passed), to pass and transfer the legal right to such debt

(*i*) Ratcliffe *v.* Burnard, L. R. 6 Ch. 652. See also Dixon *v.* Muckleston, L. R. 8 Ch. 155; Clarke *v.* Palmer, W. N. 1882. p. 87.

(*k*) Rice *v.* Rice, 2 Drew. 73; Newton *v.* Newton, L. R. 4 C. A. 143.

(*l*) 36 & 37 Vict. c. 66, sec. 25, sub-sec. 6.

or chose in action, from the date of such notice, and all legal and other remedies for the same, and the power to give a good discharge for the same, without the concurrence of the assignor. There is a proviso that if the debtor, trustee, or other person liable in respect of such debt or chose in action, shall have had notice that such assignment is disputed by the assignor or any one claiming under him, or of any other opposing or conflicting claims to such debt or chose in action, he shall be entitled, if he think fit, to call upon the several persons making claim thereto to interplead, or he may pay the same into Court, under the "Trustee Relief Acts."

But an assignment by way of charge is excepted.

It will be observed that the above enactment does not apply to an assignment by way of charge, and it has been held that an assignment subject to a proviso for redemption is a charge within the meaning of this exception (*ll*).

As the interest of a *cestui que trust* is not a legal chose in action, it is difficult to see how the above enactment can apply to a trustee, and why the word "trustee" is used.

The subject of notice on assignments of choses in action and equitable interests is further discussed in the next section.

X. *Some precautions to be observed by a person advancing money on mortgage.*

Investigation of title and searches for incumbrances.

Value of security.

A mortgagee should make the same investigation of the title and searches for incumbrances as a purchaser. He should also take care to satisfy himself that the property is of sufficient value. The ordinary rule is, that the money advanced should not exceed two-thirds of the value of the property if freehold lands of inheritance, but if the principal part of the property consists of buildings, not more than half its value should be advanced on it.

(*ll*) Nat. P. Bank *v.* Harle, 6 Q. B. D. 626.

Risk attending a second mortgage.

It is evident, from what has been stated in the former part of this Dissertation, that a person lending money on the security of an equity of redemption incurs some risk. For example, the mortgagor may have previously made equitable mortgages in addition to the first mortgage, all which equitable mortgages will have priority, on the principle of *qui prior est tempore potior est jure*. Again, if the mortgagor should, after executing such second mortgage, make a third mortgage, concealing from the third mortgagee the existence of the second mortgage, the third mortgagee may, by paying off the first mortgage, gain a priority over the second, upon the principle of tacking above explained.

Precautions to be taken by a person lending money on a second mortgage.

If, notwithstanding the above objections, the weight of which depends in each case upon the circumstances, a person agrees to lend money on a second mortgage, he should inquire of the first mortgagee how much is due upon his security, and when the second mortgage is completed, notice of it should be given to the first mortgagee. Such notice will prevent him from tacking any subsequent advance which he may make on the security of the property, although the original mortgage may be expressly made to cover future advances (*m*).

On mortgages of personalty notice should be given to trustees.

Where the subject of the mortgage is a debt, or personalty vested in trustees, or a policy of assurance, notice of the mortgage should be given to the debtor or trustees, or assurance office, as the case may be; and if the subject of the mortgage is money to arise from the sale or mortgage of land, notice should be given to the trustees in whom the duty or power of selling or mortgaging is vested, although the time of sale or mortgaging may not have arrived (*n*). If such notice is not given, the mortgagee will be postponed to a subsequent mortgagee who advances his money without notice of the prior mortgage, and himself gives due notice of his own security (*o*).

Notice necessary

Notice is also necessary as against the debtor or trustee

(*m*) Rolt *v.* Hopkinson, 3 De G. & J. 177.

(*n*) Lee *v.* Howlett, 2 Kay & Joh. 501; Foster *v.* Cockerell, 3 Cl. & Fin. 456; *Re* Hughes' Trusts, 2 H. & M. 89. See also Bridge *v.* Beadon, L. R. 3 Eq. 664.

(*o*) Loveridge *v.* Cooper, 3 Russ. 1; *In re* Freshfield's Trust, 11 Ch. D. 198.

to prevent debtor from paying original creditor.

himself, for payment to the original creditor will be a satisfaction of the debt, notwithstanding that the creditor may have assigned it to another for a valuable consideration, if the debtor has no notice of such assignment; and if the debtor has been released in a general settlement of accounts, instead of actually paying the money, the release is equally effectual (*p*).

Notice should be a formal one—trustee not bound by information casually obtained.

The notice should be a formal notice, given by the mortgagee or some one on his behalf, or otherwise acquired by the debtor or trustee in a formal and distinct manner. Thus, where a trustee became aware of the insolvency of his *cestui que trust* by reading in a newspaper an advertisement of a petition in the Insolvency Court, but he received no formal notice of the insolvency from the assignee, and afterwards the insolvent made a mortgage, notice of which was duly given to the trustee by the mortgagee, it was held that the mortgagee had priority, although, in fact, he made no inquiry of the trustee before he advanced the money (*q*). And information given casually in the course of conversation, even by the assignee himself, would not amount to a notice (*r*). But a notice given by the assignor formally and distinctly, or in such a manner as to fix the person to whom the notice is given with the consequences of acting contrary to the knowledge he has thus acquired, will be effective as against a trustee under a subsequent bankruptcy, although the assignee himself has given no notice (*s*).

Notice by trustee in bankruptcy, not necessary.

The rule as to the necessity of notice, in order to give priority, was extended to assignees under the Insolvent Acts, formerly in force (*t*), but it does not apply to trustees in bankruptcy, so that a trustee in bankruptcy not giving notice to the debtor or trustee of the fund, will not be postponed to a subsequent assignee for value, who having no notice of the bankruptcy, gives notice of his assignment (*u*).

(*p*) Stocks *v.* Dobson, 4 De G. M. & G. 11.

(*q*) Lloyd *v.* Banks, L. R. 4 Eq. 222; Brewer's Trusts, *ib.* 5 Eq. 88.

(*r*) North British Company *v.* Hallett, 7 Jur. (N. S.) 1263; Edwards *v.* Martin, L. R. 1 Eq. 121.

(*s*) *Ex parte* Agra Bank, L. R. 3 Ch. 555.

(*t*) *In re* Atkinson, 2 De G. M. & G. 140.

(*u*) See *In re* Bright's Settlement, 13 Ch. D. 413.

Intended mortgagee should inquire of trustee as to prior incumbrances.

Before advancing his money on the security of a chose in action or equitable interest in a fund vested in trustees, a prudent mortgagee will, of course, inquire of the debtor or trustee, and in case of a policy of assurance, of the assurance office, whether notice has been received of any prior incumbrance. If, however, he neglects to make such inquiry, but gives notice of his own security, he will not, on account of his neglect to inquire, be postponed to a prior incumbrancer who has given no notice, because the inquiry, if made, would not have given him the necessary knowledge.

Notice of assignment before bankruptcy

Previously to the Bankruptcy Act, 1869, a chose in action, which was the subject of a mortgage, but of which no notice had been given to the debtor or trustee, was, in the event of the bankruptcy of the assignor, deemed to be within his order and disposition, with the consent of the true owner, and saleable accordingly in the bankruptcy (*v*). Notice at any time before the bankruptcy was sufficient, although a long time might have been permitted to elapse between the execution of the equitable assignment and the giving such notice (*w*). But it is now provided by the "Bankruptcy Act, 1869" (*x*), that *things in action* other than debts due to the bankrupt in the course of his business, shall not be deemed goods and chattels within his order and disposition. It has been held that shares in a Gas Company, standing in the bankrupt's name, are not things in action within this section (*y*). But in a case, where railway shares were standing in the name of a first mortgagee, it was held that the mortgagor's interest in them was a chose in action, and consequently that they were not saleable by the trustee in bankruptcy as against a second mortgagee,

(*v*) Ryall *v.* Rowles, 1 Ves. sen. 348. Williams *v.* Thorp, 2 Sim. 257; *Re* Hughes' Trusts, *ubi suprà*. Notice to the official liquidator of the assignment of a debt due from the company has been held to be sufficient to protect the security as against the subsequent bankruptcy of the assignees, L. R. 5 Eq. 284. In a case where the mortgagees were solicitors, and one of them was one of the trustees of the fund, it was held that the notice which he had of the charge was sufficient: *Ex parte* Rogers, 8 De G. M. & G. 271.

(*w*) *Re* Pearse, *ex parte* Littledale, 24 L. T. R. 318.

(*x*) 32 & 33 Vict. c. 71, s. 15.

(*y*) *Ex parte* Union Bank of Manchester, L. R. 12 Eq. 354.

who had given no notice either to the company or to the first mortgagee (*z*). So a debenture of a Joint-stock Company, by which the company undertakes to pay a sum, and to charge their undertaking and property with the payment thereof, is a chose in action within the meaning of the Act (*zz*). A policy of assurance is also a chose in action within this section (*a*).

Notice to one of several trustees sufficient.

It is not *necessary* to give notice to more than one of the trustees, so long as the circumstances of the case remain unaltered by the death of that trustee, or his ceasing to be a trustee or otherwise (*b*).

Effect of notice to assignor being himself a trustee.

Where the assignor was himself one of the trustees, as well as one of the *cestuis que trust*, it was held by Vice-Chancellor Kindersley, that a notice to such assignor was not sufficient, on the ground that he had a motive for concealing the prior assignment from any person to whom he might make a second assignment (*c*); but in a more recent case (*d*), where on a mortgage by a husband and wife of the wife's reversionary interest, notice was given to the husband, he being one of the trustees of the fund, it was held by Lord Westbury that the notice was sufficient, as in dealing with a trustee it was to be assumed that he would deal honestly. It may, therefore, be considered settled, that the fact of the assignor being himself the trustee, does not affect the validity of the notice given to him.

Notice should be given to all the existing trustees.

It is, however, in all cases, prudent to give notice to all the existing trustees, for in case notice of an incumbrance is given to one only of several trustees, and the trustee to whom such notice is given dies, and after his death a second incumbrancer, not having actual knowledge of the first incumbrance, gives notice of his security to the surviving trustees, the second incumbrancer would by his notice gain a preference; for in the altered circum-

(*z*) *Ex parte* Barry, L. R. 17 Eq. 113.

(*zz*) *In re* Pryce, L. R. 6 C. D. 685.

(*a*) *Ex parte* Ibbetson, 8 Ch. D. 519.

(*b*) Smith *v.* Smith, 2 Cro. & M. 231; Tenison *v.* Ramsbottom, 2 Keen, 35; Meux *v.* Bell, 1 Hare, 73, 97; Bridge *v.* Beedon, L. R. 3 Eq. 664.

(*c*) Brown *v.* Savage, 4 Drew. 635.

(*d*) Willes *v.* Greenhill, 29 Beav. 387, 393; 31 L. J. (N. S.) Ch. 1; *In re* Lewer, 1 Ch. D. 101.

stances which the death of the trustee who alone had notice of the first incumbrance introduces, inquiry of all the existing trustees would not have led the inquirer to a knowledge of the previous incumbrance.

Notice to solicitor of trustees not sufficient.

Notice to the solicitor of the trustees is not sufficient, unless such notice is communicated to the trustees either verbally or in writing (*e*).

When reversionary fund is subject of settlement.

If a reversionary fund is made the subject of settlement, and a *cestui que trust* under such settlement should charge or otherwise dispose of his share, it will be prudent for the assignee to give notice of the assignment, not only to the trustees of the settlement, but also to the trustees of the document under which the settlor became entitled.

Notice on sub-mortgage of policy.

Where in the case of a sub-mortgage of a policy of assurance the sub-mortgagee gave notice to the executor of a prior mortgagee, and not to the assurance office, and the sub-mortgagor became bankrupt, such policy was held to be in the order and disposition of the bankrupt, and, as between the sub-mortgagee and the assignees, to belong to the assignees (*f*).

30 & 31 Vict. c. 144.

The 30 & 31 Vict. c. 144, provides that no assignment shall confer on the assignee a right to sue for the policy moneys until a written notice in the form prescribed by the Act is given to the Company at their principal place of business, and that the date on which such notice is received shall regulate the priority of all claims under any assignment (*ff*).

Effect of notice before fund has come into existence.

Notice before a fund has come into existence to a person who is merely a potential future trustee is ineffectual. Thus notice of a covenant to pay to covenantees the proceeds of a commission in the army, given to the army agent before any sale is actually made, is ineffectual (*g*).

New trustees not bound to inquire of

New trustees of trust funds in settlement are not bound to inquire of the old trustees whether they have

(*e*) Saffron Waldon Benefit Building Society *v.* Rayner, 14 Ch. D. 406 ; Ib. 696.

(*f*) Thompson *v.* Tomkins, 2 Drew. & Sm. 8.

(*ff*) Secs. 2, 3.

(*g*) Buller *v.* Plunkett, 1 J. & H. 441 ; Somersett *v.* Cox, 33 L. J. Ch. 490.

old trustees whether they have received notice of incumbrances.

received any notices of dealings by the *cestuis que trust.* If, therefore, an assignee or incumbrancer of a *cestui que trust* gives notice to the then trustees, and the latter retire and do not pass on the notice to the new trustees, the assignee or incumbrancer runs the risk of having the trust property distributed without reference to his claim. In order to be safe, he must either put a *distringas* on the funds, or have notice indorsed on the original trust deed (*h*).

XI. *Transfers of Mortgages and Reconveyances.*

Usual form of transfer of mortgage.

The usual form of a simple transfer of mortgage is—1st, an assignment of the mortgage debt; and, 2ndly, a conveyance of the property, which is the subject of the mortgage, to the transferee, subject to the equity of redemption subsisting under the mortgage deed.

Power of attorney to sue in name of transferor no longer necessary.

As, until lately, the mortgage debt, as secured by the mortgagor's covenant, was not assignable at law, it has been usual and proper to insert in the transfer deed a power of attorney enabling the transferee to sue for the debt in the name of the transferor; but since it is now provided by the Judicature Act, that an assignment of a debt shall be effectual in law, if notice is given to the debtor (*i*), a power of attorney is no longer necessary, if the mortgagor is a party to the deed or otherwise has notice of it, but this does not apply if the mortgage debt is transferred by way of sub-mortgage only (*j*).

Mortgagor should be made party to transfer, to admit the amount due.

A person advancing money on the security of a transfer of a mortgage, should make the mortgagor a party to the deed, if his concurrence can be obtained, for the purpose of admitting that the mortgage-money remains due. In the absence of such admission the transferee will take subject to the state of the account between the mortgagor and the original mortgagee and to all equities subsisting between them.

(*h*) Phipps *v.* Lovegrove, L. R. 16 Eq. 80.

(*i*) 36 & 37 Vict. c. 66, sec. 25, sub-sec. 6.

(*j*) Nat. P. Bank *v.* Harle, 6 Q. B. D. 626.

If a further sum is at the time of the transfer advanced by the transferee to the mortgagor, it is usual to convey the property free from the old proviso for redemption, and subject to a new one with new covenants for payment, the old mortgage debt being at the same time transferred as a protection against mesne incumbrances (if any). Sometimes, however, the deed is made to take the form of an ordinary transfer, followed by a covenant creating a further charge for the new advance. Form of deed where transferee makes a further advance.

The recent Act gives a statutory force to some short forms of transfer given in a schedule.

Where copyholds are the subject of a mortgage, and there has been a conditional surrender of them to the mortgagee, but (as is usual) no admittance on such surrender, the ordinary and proper mode of effecting a transfer is for the mortgagor to make a new conditional surrender to the transferee, satisfaction being at the same time entered upon the old surrender. If, however, the concurrence of the mortgagor cannot be obtained, it is necessary, in order to vest the legal estate in the transferee, that the transferor should be admitted tenant on the original surrender, and should then surrender again to the transferee, subject to the mortgagor's right of redemption; but this proceeding would, in many cases, involve a heavy expense in the way of fines and fees to the lord and steward, and to avoid it a transferee may sometimes be advised to accept a declaration of trust by the transferor of the benefit of the original surrender. Plan to be adopted on a transfer of mortgage of copyholds.

Upon payment of principal, interest, and costs, the mortgagor is entitled to a reconveyance at his own expense of the mortgaged property. If the mortgage is of freeholds, and the mortgagee has died intestate before the 1st January, 1882, the legal estate will have descended on his heir, who, until a recent statute, would have been the proper person to reconvey, and if he was an infant, it would have been necessary to get a vesting order through the Court under the Trustee Act. By the Vendor and Purchaser Act, 1874 (*j*), it was enacted that the legal personal representative of a mortgagee Mortgagor entitled to a reconveyance on payment of mortgage debt. Under Vendor and Purchaser Act legal

(*j*) Sec. 4.

personal representative could, on payment of all money secured by mortgage reconvey.

of a freehold estate, or of a copyhold estate to which the mortgagee shall have been admitted, may, on payment of all sums secured by the mortgage, convey or surrender the mortgaged estate, whether the mortgage be in form an assurance subject to redemption, or an assurance upon trust. The Conveyancing Act, 1881, repeals the above clause in the Vendor and Purchaser Act, as regards all mortgagees dying after the 31st December, 1881, and provides with respect to such mortgagees that where an estate or interest of inheritance, or limited to the heir as special occupant in any tenements or hereditaments is vested by way of mortgage in any person solely, the same shall, on his death, notwithstanding any testamentary disposition, devolve on his personal representative as if it were a chattel real (*jj*).

Now under Conveyancing Act, 1881, mortgaged estate vests in personal representative.

Sect. 4 of Vendor and Purchaser Act does not apply to a transfer.

It has been held that section 4 of the Vendor and Purchaser Act applies only to a reconveyance strictly so-called, *i.e.*, a reconveyance to the mortgagor himself, but not to a transfer of the whole debt in consideration of the full amount paid by the transferee to the transferor (*k*). The decision seems a narrow one, but the point is of little importance, having regard to the more comprehensive provision in the Act of 1881.

Trustee Act, 1850.

In cases where the legal estate has descended on an infant, and the above enactments do not apply, it will be necessary to obtain a vesting order under the "Trustee Act, 1850" (*l*).

Vesting order in case of lunatic mortgagee.

Where a mortgagee becomes lunatic, a vesting order must be obtained from the judges of the High Court of Justice, or of the Court of Appeal, entrusted with the care of lunatics by the Queen's sign manual (*m*).

Where mortgage is of copyholds, warrant of satisfaction should be entered up,

Where the mortgage is of copyholds, and the mortgagee has not been admitted, it is sufficient to enter up satisfaction on the Court rolls, and a warrant for this purpose should be given to the steward. If he has

(*jj*) Sec. 30, sub-sec. 2.

(*k*) See *In re* Spradbery's Mortgage, 14 Ch. D. 514.

(*l*) 13 & 14 Vict. c. 60, secs. 7 and 8.

(*m*) 13 & 14 Vict. c. 60, secs. 3 to 6; 15 & 16 Vict. c. 87, s. 15; 38 & 39 Vict. c. 77, sec. 7.

been admitted, a surrender to the mortgagor will be necessary. unless mortgagee has been admitted.

Where a mortgage of freeholds is for a term of years only, it is usual to have a surrender on the mortgage being paid off; but a receipt in full endorsed on the deed will have the same legal effect, as the term being satisfied by payment will cease. Where mortgage is for a term, surrender usual, but not necessary.

The 15th section of the Conveyancing Act, 1881, enacts that when a mortgagor is entitled to redeem he shall have power to require the mortgagee, instead of reconveying and on the terms on which he would be bound to reconvey to assign the mortgage debt and convey the mortgaged property to any third party, as the mortgagor directs; and the 12th section of the Conveyancing Act, 1882, declares that this right shall belong to and be capable of being enforced by each incumbrancer or by the mortgagor notwithstanding any intermediate incumbrance, but that a requisition of an incumbrancer shall prevail over a requisition of the mortgagor, and that, as between incumbrancers, a requisition of a prior incumbrancer shall prevail over a requisition of a subsequent incumbrancer. Obligation on mortgagee if required to transfer instead of reconveying.

Where land has been registered under the "Land Transfer Act, 1875," it can only be mortgaged so as to confer on the mortgagee a good title against subsequent purchasers or mortgagees, in the manner prescribed by the Act and the Rules and Orders made in pursuance thereof (38 & 39 Vict. c. 87, secs. 22 to 28). And a deposit of the land certificate is by the Act made equivalent to a deposit of title deeds so as to create an equitable mortgage (sec. 81). Mortgages of registered land.

XII. *Stamps on mortgages, and deeds relating to mortgages.*

Stamps on mortgages.

By the "Stamp Act, 1870" (33 & 34 Vict. c. 97), MORTGAGE, bond, debenture, covenant, warrant of attorney to confess and enter up judgment, and foreign security of any kind;

(1.) Being the only or principal or primary security for—

	£	*s.*	*d.*
The payment or repayment of money not exceeding £25	0	0	8
Exceeding £25 and not exceeding £50 . .	0	1	3
,, 50 ,, 100 . .	0	2	6
,, 100 ,, 150 . .	0	3	9
,, 150 ,, 200 . .	0	5	0
,, 200 ,, 250 . .	0	6	3
,, 250 ,, 300 . .	0	7	6
,, 300			
For every £100, and also for any fractional part of £100, of such amount . . .	0	2	6

(2.) Being a collateral, or auxiliary, or additional or substituted security, or by way of further assurance for the above-mentioned purpose, where the principal or primary security is duly stamped;

For every £100, and also for any fractional part of £100 of the amount secured . .	0	0	6

Stamps on transfers of mortgages.

(3.) TRANSFER, ASSIGNMENT, DISPOSITION, or assignation of any mortgage, bond, debenture, covenant, or foreign security, or of any money or stock secured by any such instrument, or by any warrant of attorney to enter up judgment, or by any judgment;

For every £100 and also for any fractional part of £100 of the amount transferred, assigned, or disponed . . .	0	0	6

And also where any further sum of money is added to the money already secured . . . } The same duty as a principal security for such further money.

(4.) RECONVEYANCE, release, discharge, surrender, resurrender, warrant to vacate or renunciation of any such security as aforesaid, or of the benefit thereof, or of the money thereby secured; Stamps on reconveyance.

	£	s.	d.
For every £100, and also for any fractional part of £100, of the total amount or value of the money at any time secured .	0	0	6

The term "mortgage" means a security by way of mortgage for the payment of any definite and certain sum of money advanced or lent at the time, or previously due and owing, or forborne to be paid, being payable, or for the repayment of money to be thereafter lent, advanced, or paid, or which may become due upon an account current, together with any sum already advanced or due, or without, as the case may be. Interpretation of term

And includes:—

Conditional surrender by way of mortgage, further charge, wadset, and heritable bond, disposition, assignation, or tack in security, and eik to a reversion of or affecting any lands, estate, or property, real or personal, heritable, or moveable, whatsoever.

Also any deed containing an obligation to infeft any person in an annual rent, or in lands or other heritable subjects in Scotland under a clause of reversion, but without any personal bond or obligation therein contained for payment of the money or stock intended to be secured.

Also any conveyance of any lands, estate, or property whatsoever in trust to be sold or otherwise converted into money, intended only as a security, and redeemable before the sale or other disposal thereof, either by express stipulation or otherwise, except where such conveyance is made for the benefit of creditors generally, or for the benefit of creditors specified, who accept the provision made for

payment of their debts in full satisfaction thereof, or who exceed five in number.

Also any defeazance, letter of reversion, back bond, declaration, or other deed or writing, for defeating or making redeemable or explaining or qualifying any conveyance, disposition, assignation, or tack of any lands, estate, or property whatsoever, apparently absolute, but intended only as a security.

Also any agreement, contract, or bond, accompanied with a deposit of title deeds (*n*), for making a mortgage, wadset, or any such other security or conveyance as aforesaid, of any lands, estate, or property comprised in such title deeds, or for pledging or charging the same as a security.

And also any deed whereby a real burden is declared or created on lands or heritable subjects in Scotland (*o*).

Security for stock, how to be charged.

A security for the transfer or retransfer of any stock is to be charged with the same duty as a similar security for a sum of money equal in amount to the value of such stock; and a transfer, assignment, disposition, or assignation of any such security, and a reconveyance, release, discharge, surrender, resurrender, warrant to vacate, or renunciation of any such security, shall be charged with the same duty as an instrument of the same description relating to a sum of money equal in amount to the value of such stock (*p*).

Security for future advances, how to be charged.

(1.) A security for the payment or repayment of money to be lent, advanced, or paid, or which may become due upon an account current, either with or without money previously due, is to be charged, where the total amount secured or to be ultimately recoverable is in any way limited, with the same duty as a security for the amount so limited.

(2.) Where such total amount is unlimited, the security is to be available for such an amount only as the *ad valorem* duty impressed thereon extends to cover.

(*n*) In a case where title deeds were deposited by way of security, accompanied by a memorandum simply stating the purpose for which they were deposited, it was held that the mortgage did not require a mortgage stamp. Meek *v.* Bayliss, 31 L. J. Ch. 448.

(*o*) Sec. 105.

(*p*) Sec. 106.

(3.) Provided that no money to be advanced for the insurance of any property comprised in any such security against damage by fire, or for keeping up any policy of life insurance comprised in such security, or for effecting in lieu thereof any new policy, or for the renewal of any grant or lease of any property comprised in such security upon the dropping of any life whereupon such property is held, shall be reckoned as forming part of the amount in respect whereof the security is chargeable with *ad valorem* duty (*q*). Proviso.

A security for the payment of any rent-charge, annuity, or periodical payments by way of repayment or in satisfaction or discharge of any loan, advance, or payment, intended to be so repaid, satisfied, or discharged, is to be charged with the same duty as a similar security for the payment of the sum of money so lent, advanced, or paid (*r*). Security for repayment by periodical payments, how to be charged.

No transfer of a duly stamped security, and no security by way of further charge for money or stock, added to money or stock previously secured by a duly stamped instrument, is to be charged with any duty by reason of containing any further or additional security for the money or stock transferred or previously secured, or the interest or dividends thereof, or any new covenant, proviso, power, stipulation, or agreement in relation thereto, or any further assurance of the property comprised in the transferred or previous security (*s*). As to transfers and further charges.

(1.) Where any copyhold or customary lands or hereditaments are mortgaged alone by means of a conditional surrender or grant, the *ad valorem* duty is to be charged on the surrender or grant, if made out of Court, or the memorandum thereof, and on the copy of Court Roll of the surrender or grant, if made in Court. As to copyholds.

(2.) Where any copyhold or customary lands or hereditaments are mortgaged, together with other property, for securing the same money or the same stock, the *ad valorem* duty is to be charged on the instrument relating to the other property, and the surrender or grant, or the memorandum thereof, or the copy of Court Roll of the surrender or grant, as the case may be, is

(*q*) Sec. 107. (*r*) Sec. 108. (*s*) Sec. 109.

to be charged with duty as if the surrender or grant were not made upon a mortgage, but such last-mentioned duty shall not exceed the said *ad valorem* duty (*t*).

As to mortgage with conveyance of equity of redemption.

An instrument chargeable with *ad valorem* duty as a mortgage is not to be charged with any other duty by reason of the equity of redemption on the mortgage property being thereby conveyed or limited in any other manner than to, or in trust for, or according to the direction of, a purchaser (*u*).

Exemption from stamp duty in favour of benefit building societies restricted.

Section 112 provides that the exemption (*x*) from stamp duty conferred by the Act of the sixth and seventh years of King William the Fourth, chapter thirty-two, for the regulation of Benefit Building Societies, shall not extend to any mortgage to be made after the passing of this Act, except a mortgage by a member of a Benefit Building Society, for securing the repayment to the society of money not exceeding five hundred pounds. The Act of William the Fourth is repealed by the "Building Societies' Act, 1874" (*y*), as regards any society obtaining a certificate of incorporation under the latter Act; and the same Act (*z*) provides for the exemption from stamp duty of all documents except mortgages. It would therefore appear that mortgages to Building Societies incorporated under the new Act require an *ad valorem* stamp, whatever may be the amount secured thereby.

(*t*) Sec. 110. (*u*) Sec. 111.

(*x*) The exemption referred to is conferred by the 8th section of the 6 & 7 Wm. IV. c. 32, which enacts that no rules of any such society, or any copy thereof, nor any transfer of any share or shares in any such society, shall be subject to any stamp duty or duties whatsoever.'

(*y*) 37 & 38 Vict. c. 42, sec. 7. (*z*) Sec. 41.

No. I.

MORTGAGE *in* FEE *of* FREEHOLDS *to* ONE PERSON (*a*).

OF FREEHOLDS TO ONE.

THIS INDENTURE, made the —— day of ——, BETWEEN A. B., of, &c. (*mortgagor*), of the one part, and C. D., of, &c. (*mortgagee*), of the other part, WITNESSETH that in consideration of the sum of £—— paid to the said A. B. by the said C. D. on or before the execution of these presents (the receipt whereof the said A. B. hereby acknowledges), the said A. B. hereby covenants with the said C. D. to pay to him on the —— day of —— next, the sum of £—— with interest thereon in the meantime after the rate of £—— per cent. per annum, computed from the date of these presents; and also so long after that day as any principal money remains due under these presents, to pay to him interest thereon after the same rate by equal half-yearly payments on the —— day of ——, and the —— day of —— (*b*): AND THIS INDENTURE ALSO WITNESSETH, that for the consideration aforesaid the said A. B., as beneficial owner, hereby conveys unto the said C. D. ALL, &c. (*parcels*), TO HOLD the same unto and to the use of the said C. D., in fee simple: PROVIDED ALWAYS, that if the said sum of £——, with interest thereon, shall be paid on the —— day of —— next, according to the foregoing covenant in that behalf, the said premises shall, at the request and cost of the said A. B., his heirs or assigns (*c*), be reconveyed to him or them [AND the said A. B. hereby cove-

Parties.

Covenant by mortgagor to pay principal and interest.

Mortgagor conveys to mortgagee, subject to proviso for redemption.

Covenant for insurance against fire.

(*a*) If the mortgagee is a married woman who has married since the 31st of December, 1882, she will be described as "C. D., the wife of E. D., to whom she was married since the 31st day of December, 1882," and the advance will be stated to be made by her "out of her separate property." In other respects the deed will be in the same form as Precedent No. I., as to freeholds; Precedent No. VII., *infrà*, p. 524, as to copyholds; and Precedent No. IX., *infrà*, p. 525, as to leaseholds, substituting "she" for "he," and "her" for "him," when necessary.

(*b*) If the separate covenant to pay interest is omitted the mortgagee will be entitled to recover interest from the day of default by way of damages, and the rate would be that fixed by the parties unless it exceeds £5 per cent., in which case £5 per cent. only would be allowed (*Re* Roberts, 14 Ch. D. 49). Moreover, if there is no separate covenant, interest could only be recovered by calling in the principal.

(*c*) There seems no reason why the draftsman should discontinue the use of the words "his heirs or assigns" in places where words having this meaning are required, in order to substitute for them the longer and less

Observation on forms in schedule to Act.

OF FREEHOLDS TO ONE.

nants with the said C. D. that he, the said A. B., his heirs and assigns, will at all times during the continuance of this security keep the messuage and buildings comprised herein insured against loss or damage by fire in the sum of £—— at least [or in a sum equal to three-fourths of the value thereof] in the —— Insurance Office, or in some other Insurance Office approved by the said C. D., his executors, administrators, or assigns, and will on demand produce to him or them the policy of such insurance, and the receipt for every premium payable in respect thereof (*c*).] [AND IT IS HEREBY DECLARED that no [building] lease made by the said A. B., his heirs or assigns, of the said premises, or any part thereof, during the continuance of this security shall have effect by force or virtue of section 18 of the Conveyancing and Law of Property Act, 1881, unless the said C. D., his executors, administrators, or assigns, shall consent thereto in writing (*d*).]

Power of leasing conferred by Act on mortgagor not to be exercised without consent.

IN WITNESS, &c.

familiar expression, "the persons claiming under him," which occurs four times in the form of mortgage given in the 4th schedule to the recent Act. With regard to these forms generally, it must not be supposed that section 57 gives them any special virtue, or that the draftsman need adopt particular expressions in them which appear to him less appropriate than those which he has hitherto used.

(*c*) This covenant will be inserted where a substantial part of the security consists of buildings. If the mortgagor does not perform the above covenant, the mortgagee is empowered to insure and to add the premiums to his mortgage-money. *Suprà*, pp. 452, 458.

As to negativing statutory power of leasing.

(*d*) The above clause negativing the statutory power of leasing is not to be inserted in every mortgage as a matter of course. If the property consists of a landed estate of ample value, it is reasonable and convenient that the mortgagor while he remains in possession should have all the powers necessary to the due management of the estate, including that of granting leases for twenty-one years to tenants, and as the rent must be a rack-rent, the mortgagee cannot be prejudiced. As regards house property in a town the case is different, particularly if the security is scanty, and as a general rule a mortgagee may not unreasonably require that his consent should be asked before a lease is granted. This observation applies with additional force to the power of granting building leases for 99 years.

Sometimes it may be desired to exclude building leases only, in which case the word "building" may be inserted before "lease" in the proviso in the text.

No. II.

STATUTORY MORTGAGE *in* FEE (*a*).

STATUTORY MORTGAGE IN FEE.

THIS INDENTURE, made by way of statutory mortgage, the —— day of ——, 18—, BETWEEN A. B. of, &c. (*mortgagor*), of the one part, and C. D. of, &c. (*mortgagee*), of the other part, WITNESSETH, that in consideration of the sum of £—— now paid to the said A. B. by the said C. D., of which sum the said A. B. hereby acknowledges the receipt, the said A. B., as mortgagor and as beneficial owner, hereby conveys to the said C. D. All that, &c. (*parcels*): TO HOLD to and to the use of the said C. D., in fee simple, for securing payment on the —— day of ——, 188—, of the principal sum of £——, as the mortgage money with interest thereon at the rate of —— per centum per annum.

Parties.

IN WITNESS, &c.

(*a*) This form of statutory mortgage is given in the 3rd schedule to the Conveyancing Act, 1881, and it includes, by virtue of the Act—first, a covenant with the mortgagee by the person therein expressed to convey as mortgagor, to the effect that the mortgagor will, on the stated day, pay to the mortgagee the stated mortgage money, with interest thereon in the meantime, at the stated rate, and will thereafter, if and as long as the mortgage money or any part thereof remains unpaid, pay to the mortgagee interest thereon, or on the unpaid part thereof, at the stated rate, by equal half-yearly payments, the first thereof to be made at the end of six calendar months from the day stated for payment of the mortgage money: And secondly, a proviso to the effect that if the mortgagor, on the stated day, pays to the mortgagee the stated mortgage money, with interest thereon in the meantime, at the stated rate, the mortgagee at any time thereafter, at the request and cost of the mortgagor, shall re-convey the mortgaged property to the mortgagor, or as he shall direct.

Effect given by Act to statutory mortgage.

It may be observed that the Act would have been more complete, if it had provided that in every conveyance made by way of mortgage a proviso for redemption should be implied, instead of making it necessary to use the word "statutory," and to adopt a special form in order to give a deed this operation. There is no objection to the use of the statutory mortgage form in simple cases, but where any additional provisions are desired such additions fit in better to a deed in the form of Precedent No. I., and as the slight difference in length is hardly worth consideration, it is probable that the statutory form will not be generally adopted.

Observations on statutory forms.

No. III.

FOR TIME CERTAIN, WITH REDUCTION OF INTEREST ON PUNCTUAL PAYMENT.

MORTGAGE *in* FEE *with* PROVISIONS *for* REDUCING *the rate of* INTEREST *in case of* PUNCTUAL PAYMENT, *and for continuing the* LOAN *for a* TIME CERTAIN (*a*).

Parties.

THIS INDENTURE, made the —— day of ——, BETWEEN A. B. of, &c. (*mortgagor*), of the one part, and C. D. of, &c. (*mortgagee*), of the other part, WITNESSETH, that in consideration, &c. (*covenant to pay principal money and interest as in Precedent No. I., suprà*, p. 515, *adding at the end of the covenant for payment of interest the following*) :

Proviso for reduction of interest in case of punctual payment.

PROVIDED ALWAYS, that if and whenever a half year's interest for the said principal sum of £——, after the rate of £4 per cent. per annum, shall be paid upon the half-yearly day hereinbefore appointed for payment of interest, or within one calendar month thereafter, the same shall be accepted in lieu of and in satisfaction for the interest after the rate of £5 per cent. per annum, payable for that half year under the foregoing covenant in that behalf, but no claim for reduction shall be made under this clause in respect of any half-yearly payment of interest not made within the time aforesaid (*b*) : AND THIS INDENTURE ALSO WITNESSETH, that for the consideration aforesaid the said A.B. &c. (*Conveyance to mortgagee in fee simple subject to redemption, and covenant for insurance against fire and declaration as to leasing power where applicable, suprà*, pp. 515, 516) :

Proviso that mortgagee shall not call in money for a term.

PROVIDED ALWAYS, and it is hereby agreed and declared, that payment of the principal money hereby secured shall not be required until the expiration of —— years computed from the date hereof if in the meantime every half-yearly payment of interest shall be made upon the half-yearly day hereinbefore appointed for payment thereof, or within one calendar month thereafter [and the

(*a*) It must not be supposed that where there is a provision for reducing the rate of interest on punctual payment, it is always accompanied by a provision for continuing the loan for a time certain, or *vice versâ*. The latter is only inserted where specially arranged for ; the former is in very common use.

(*b*) See p. 454, *suprà*.

covenant of the said A. B. hereinbefore contained for keeping the said premises insured against loss or damage by fire shall be duly observed and performed]: But upon any sale made under the statutory power in that behalf before the expiration of the aforesaid period, the purchaser shall not be bound or concerned to see or inquire whether such sale is consistent with this proviso, and if a sale is made in breach thereof the title of the purchaser shall not be impeached on that account: Provided also, and it is hereby further agreed and declared, that the said A. B., or any person claiming under him, shall not be at liberty to pay off the said principal sum of ——, or any part thereof, before the expiration of —— years, computed from the date of these presents, unless the said C. D., his executors, administrators, or assigns, shall be willing to receive the same earlier, nor to pay the same on or after the expiration of the said period without giving the usual six months' notice of intention so to do.

FOR TIME CERTAIN, WITH REDUCTION OF INTEREST ON PUNCTUAL PAYMENT.

Proviso that purchaser shall not be affected by above proviso.

Proviso that mortgagor shall not pay off money before end of term.

In witness, &c.

No. IV.

MORTGAGE *in fee of* Freeholds *to persons* Lending Money *on a* Joint Account (*a*).

FREEHOLDS TO SEVERAL.

THIS INDENTURE, made, &c., Between A. B. of, &c. (*mortgagor*), of the one part, and C. D., of, &c., E. F.,

Parties.

(*a*) It is provided by section 61 of the Conveyancing Act, 1881, as to mortgages made after the commencement of the Act, that where in a mortgage, or an obligation for payment of money, or a transfer of a mortgage or of such an obligation, the sum, or any part of the sum advanced or owing is expressed to be advanced by or owing to more persons than one out of money, or as money belonging to them on a joint account, or a mortgage, or such an obligation, or such a transfer is made to more persons than one, jointly, and not in shares, the mortgage money, or other money, or money's worth for the time being due to those persons on the mortgage or obligation, shall be deemed to be and remain money or money's worth belonging to those persons on a joint account, as between them and the mortgagor or obligor; and the receipt in writing of the survivors or last survivor of them, or of the personal representatives of the last survivor, shall be a complete discharge for all money or money's

Effect of statement that money belongs to mortgagees on joint account, &c.

FREEHOLDS TO SEVERAL.

of, &c., and G. H., of, &c., (*mortgagees*), of the other part: WITNESSETH that in consideration of the sum of £—— paid to the said A. B. by the said C. D., E. F., and G. H., on or before the execution of these presents, out of moneys belonging to them on a joint account (the receipt whereof the said A. B. hereby acknowledges) THE said A. B. hereby covenants with the said C. D., E. F., and G. H., to pay to them on the —— day of —— next, the sum of £——, with interest thereon in the meantime after the rate of £—— per cent. per annum, computed from the date of these presents: AND also so long after that day as any principal money remains due under these presents to pay to them interest thereon after the same rate by equal half-yearly payments on the —— day of ——, and the —— day of ——: AND THIS INDENTURE ALSO WITNESSETH, that for the consideration aforesaid the said A. B., as beneficial owner, hereby conveys to the said C. D., E. F., and G. H., ALL, &c. (*parcels*): TO HOLD the same unto and to the use of the said C. D., E. F., and G. H., in fee simple, PROVIDED ALWAYS, that if the said sum of £——, with interest thereon, shall be paid on the —— day of —— next, according to the foregoing covenant in that behalf, the said premises shall, at the request and cost of the said A. B., his heirs or assigns, be reconveyed to him or them: [AND the said A. B. hereby covenants with the said C. D., E. F., and G. H., that he the said A. B., his heirs and assigns, will at all times during the continuance of this security keep the messuage and buildings comprised herein, insured against loss or damage by fire, in the sum of £—— at least, [*or* in a sum equal to three fourths of the value thereof], in the —— Insurance Office, or in some other Insurance Office approved by the said C. D., E. F., and G. H., their executors, administrators, or assigns, AND WILL on demand produce to them the policy of such insurance and the receipt for every premium payable in respect thereof] (*b*). (*If it is wished to negative the leasing power generally or the power to grant building leases only, add as follows*): AND IT IS HEREBY DECLARED that no [building] lease made by the said A. B., his heirs or assigns, of the said premises, or any part thereof, during

Mortgagor covenants to pay principal money and interest.

Mortgagor conveys to mortgagee in fee simple, subject to proviso for redemption.

Covenant to insure against fire.

Power of leasing conferred by Act on mortgagor not to

worth for the time being due, notwithstanding any notice to the payer of a severance of the joint account.

(*b*) See note (*c*), *supra*, p. 516.

the continuance of this security shall have effect by force or virtue of section 18 of the Conveyancing and Law of Property Act, 1881, unless the said C. D., E. F., and G. H., their executors, administrators, or assigns, shall consent thereto in writing. FREEHOLDS TO SEVERAL. be exercised without consent.

IN WITNESS, &c.

No. V.

MORTGAGE *in* FEE *to persons* LENDING MONEY *on a* JOINT ACCOUNT *with* PROVISIONS *for* REDUCING *the* RATE *of* INTEREST *in case of* PUNCTUAL PAYMENT *and for* CONTINUING *the* LOAN *for a* TIME CERTAIN. TO SEVERAL FOR TIME CERTAIN, WITH REDUCTION OF INTEREST ON PUNCTUAL PAYMENT.

THIS INDENTURE, made the —— day of ——, BETWEEN A. B. of, &c. (*mortgagor*), of the one part, and C. D. of, &c., E. F. of, &c., and G. H. of, &c. (*mortgagees*), of the other part: WITNESSETH that in consideration, &c. (*Covenant by mortgagor to pay principal and interest, suprà*, p. 520): PROVIDED ALWAYS, that if and whenever a half-year's interest for the said principal sum of £——, after the rate of £4 per centum per annum shall be paid upon the half-yearly day hereinbefore appointed for payment of interest, or within one calendar month thereafter, the same shall be accepted in lieu of, and in satisfaction for, the interest after the rate of £5 per cent. per annum, payable for that half-year, under the foregoing covenant in that behalf, but no claim for reduction shall be made under this clause in respect of any half-yearly payment of interest not made within the time aforesaid: AND THIS INDENTURE ALSO WITNESSETH that, &c. (*Conveyance to mortgagees in fee, proviso for redemption, and covenant to insure against fire and declaration as to leasing power if applicable, suprà*, p. 520): PROVIDED ALSO, and it is hereby agreed and declared, that payment of the principal money hereby secured shall not be required until the expiration of —— years, computed from the date of these presents, if in the meantime every half-yearly payment of interest shall be made

Parties.

Proviso for reduction of interest in case of punctual payment.

Provisions for continuing loan for time certain.

TO SEVERAL FOR TIME CERTAIN, WITH REDUCTION OF INTEREST ON PUNCTUAL PAYMENT.

upon the half-yearly day hereinbefore appointed for payment thereof, or within one calendar month thereafter, [and the covenant of the said A. B. hereinbefore contained for keeping the said premises insured against loss or damage by fire shall be duly observed and performed]; BUT upon any sale made under the statutory power in that behalf, before the expiration of the aforesaid period the purchaser shall not be bound or concerned to see or inquire whether such sale is consistent with this proviso, and if a sale is made in breach thereof, the title of the purchaser shall not be impeached on that account: PROVIDED ALSO, and it is hereby further agreed and declared, that the said A. B., or any person claiming under him, shall not be at liberty to pay off the said principal sum of £——, or any part thereof, before the expiration of —— years, computed from the date of these presents, unless the said C. D., E. F., and G. H., their executors, administrators, or assigns, shall be willing to receive the same earlier, nor to pay the same on or after the expiration of the said term without giving the usual six calendar months' notice of intention so to do.

Purchaser not to be affected by above proviso.

Proviso that mortgagor shall not pay off money before end of term.

IN WITNESS, &c.

No. VI.

OF FREEHOLDS, WITH EXPRESS POWER OF SALE.

MORTGAGE *of* FREEHOLDS *to* ONE *with express* POWER *of* SALE (*a*).

THIS INDENTURE, &c. (*same as No. I. to end, adding as follows*): AND IT IS HEREBY AGREED AND DECLARED, that it shall be lawful for the said C. D., his executors, administrators, or assigns, at any time or times, without any further consent on the part of the said A. B., his heirs or assigns, to sell the hereditaments and premises hereby conveyed, or any part or parts thereof, either together or in lots, and either by public auction or private contract, and either with or without special conditions

Power of sale.

(*a*) It is considered that the power of sale conferred by the new Act is fully as advantageous to the mortgagee as that which was before the Act usually conferred by the deed. But as there may be circumstances in which a mortgagee would wish to have an express power, the above Precedent is retained.

or stipulations relative to title or otherwise, with power to buy in at sales by auction, and to rescind contracts for sale, and to resell without being answerable for any loss or diminution in price, and with power also to execute assurances, give effectual receipts for the purchase-money, and do all other acts and things for completing the sale, which the said C. D., his executors, administrators, or assigns, shall think proper: AND IT IS HEREBY AGREED AND DECLARED, that the said C. D., his executors, administrators, or assigns, shall, with and out of the moneys to arise from any such sale as aforesaid, in the first place pay and retain the costs and expenses attending such sale, or otherwise incurred in relation to this security, and in the next place pay and satisfy the moneys which shall then be owing upon the security of these presents, and shall pay the surplus (if any) to the said A. B., his heirs or assigns (*b*): PROVIDED ALWAYS, and it is hereby agreed and declared, that the power of sale hereinbefore contained shall not be exercised unless default shall be made in payment of the said principal sum of £——, or the interest thereof, or some part thereof respectively, on the said —— day of ——, and also for the space of three calendar months next after a notice in writing requiring such payment shall by or on behalf of the said C. D., his executors, administrators, or assigns, have been given to, or left at the usual or last known place of abode, in England or Wales, of the said A. B., or one of his executors or administrators, or left upon or affixed to some part of the land hereby conveyed, or some building thereon, or unless default shall be made in some half-yearly payment of interest, or some part thereof, for the space of two calendar months after the time hereby appointed for such payment: PROVIDED ALSO, and it is hereby declared that no purchaser upon any sale under the power hereinbefore contained, shall be bound or concerned to see or inquire whether any such default

OF FREEHOLDS, WITH EXPRESS POWER OF SALE.

Declaration of trusts of purchase-money.

Power to be exercised only in case of default in payment after notice, or of interest being in arrear.

Purchaser not bound to inquire as to default, &c.

(*b*) The surplus moneys should be limited to the mortgagor, his heirs, or assigns, because it is no part of a mortgage unnecessarily to deprive the lands of their character as real estate. If a sale under the power takes place after the death of the mortgagor, his heir, or his devisee of the land, would be entitled to the surplus proceeds, and the effect would be the same, although they may be directed by the mortgage deed to be paid to the mortgagor, his executors, administrators, and assigns. *In re* Clark's Trust, 22 L. J. (Ch.) 230; Wright *v.* Rose, 2 Sim. & Stu. 323; Hardy *v.* Felton, 14 L. T. 346; Bourne *v.* Bourne, 2 Hare, 35; see and consider *In re* Underwood, 3 K. & J. 745.

Surplus moneys.

OF FREEHOLDS, WITH EXPRESS POWER OF SALE.

has been made, or whether any such notice has been given, or left or affixed as aforesaid, or otherwise as to the necessity or propriety of such sale, or be affected by notice that no such default has been made, or notice given or left or affixed as aforesaid, or that the sale is otherwise unnecessary or improper: AND IT IS HEREBY DECLARED, that the power of sale hereinbefore contained, may be exercised by any person or persons for the time being entitled to receive and give a discharge for the money owing upon the security of these presents. (*Declaration as to leasing power, if desired, suprà*, p. 516.)

Power may be exercised by any person entitled to give a discharge for mortgage money.

IN WITNESS, &c.

No. VII.

COPYHOLDS.

MORTGAGE *of* COPYHOLDS.

Parties.

THIS INDENTURE, made the —— day of ——, BETWEEN A. B. of, &c. (*mortgagor*), of the one part, and C. D. of, &c. (*mortgagee*), of the other part, WITNESSETH, that in consideration of the sum of £—— paid to the said A. B. by the said C. D., on or before the execution of these presents, (the receipt whereof the said A. B. hereby acknowledges,) the said A. B. hereby covenants, &c. (*Covenant to pay principal and interest, suprà*, p. 515): AND THIS INDENTURE ALSO WITNESSETH, that for the consideration aforesaid the said A. B., as beneficial owner, hereby covenants with the said C. D. that he the said A. B. will forthwith at his own cost surrender, or cause to be surrendered, into the hands of the lord of the manor of ——, according to the custom of the said manor, ALL, &c. (*copyhold parcels*): To the use of the said C. D. in customary fee simple, according to the custom of the said manor, by and under the rents, suits, and services therefor due and of right accustomed, subject nevertheless to a condition for making void the said surrender if the said sum of £—— with interest thereon shall be paid according to the foregoing covenant in that behalf. (*Add covenant for insurance and declaration as to leasing power when applicable, suprà*, p. 516.)

Covenant to pay principal and interest;

to surrender copyhold parcels to mortgagee, subject to condition

for making void the surrender on payment on a day named.

IN WITNESS, &c.

No. VIII.

CONDITIONAL SURRENDER *of* COPYHOLDS.

CONDITIONAL SURRENDER.

THE MANOR *of* ——
in the County of —— } BE IT REMEMBERED, that on the —— day of ——, A. B. of, &c. (*mortgagor*), comes before L. M. of, &c., steward of the said manor, out of Court, and in consideration of the sum of £—— to the said A. B. paid by C. D. of, &c. (*mortgagee*), surrenders into the hands of the lord of the said manor, by the hands and acceptance of his said steward, according to the custom of the said manor, ALL, &c. (*here describe the copyhold parcels*), (To which premises the said A. B. was admitted tenant at a general Court held for the said manor on the —— day of ——): To THE USE of the said C. D., and his heirs (*a*), at the will of the lord, according to the custom of the said manor, by and under the rents, suits, and services therefor due and of right accustomed: SUBJECT NEVERTHELESS TO THIS CONDITION, that if the said A. B., his heirs, executors, or administrators, shall on the —— day of —— next pay to the said C. D., his executors, administrators, or assigns, the sum of £——, with interest for the same after the rate of £—— per centum per annum, to be computed from the date of this surrender, then and in such case this surrender shall be void and of no effect, otherwise the same shall remain in full force and virtue.

Surrender of parcels

to mortgagee in fee

subject to condition for making surrender void on payment of mortgage debt and interest.

This surrender was taken and accepted the day and year above written by me.

Signed L. M. (*Steward*),
Steward of the Manor.

No. IX.

MORTGAGE *of a* LEASEHOLD MESSUAGE *by* DEMISE.

LEASEHOLDS BY DEMISE.

THIS INDENTURE, made the —— day of ——, BETWEEN A. B. of, &c. (*mortgagor*), of the one part, and C. D. of, &c.

Parties.

(*a*) Sec. 51 of the Conveyancing Act, 1881, applies only to a *deed*.

LEASEHOLDS BY DEMISE.

(*mortgagee*), of the other part: WHEREAS by an indenture of lease dated the —— day of ——, and made between G. H. of, &c., of the one part, and the said A. B. of the other part: ALL that messuage or tenement, &c. (*parcels as contained in the lease*), were demised unto the said A. B., from the —— day of —— then last past for the term of —— years, at the yearly rent of £——, and subject to the covenants and conditions in the said indenture of lease contained, and on the part of the lessee, to be observed and performed, including a covenant to insure the said premises against loss or damage by fire, in the joint names of the lessor and lessee, in the sum of £—— at least:

Recite indenture of lease.

Agreement for loan.

AND WHEREAS the said C. D. has agreed at the request of the said A. B. to lend to him the sum of £—— upon having the re-payment thereof with interest secured to him in the manner hereinafter expressed: NOW THIS INDENTURE WITNESSETH that in consideration of the sum of £—— paid to the said A. B. by the said C. D., on or before the execution of these presents (the receipt whereof the said A. B. hereby acknowledges): THE said A. B. hereby covenants (*Covenant to pay principal and interest, suprà*, p. 515): AND THIS INDENTURE ALSO WITNESSETH that for the consideration aforesaid the said A. B., as beneficial owner, hereby demises unto the said C. D. THE messuage and premises comprised in the hereinbefore recited indenture of lease: TO HOLD the same unto the said C. D., for all the residue now unexpired of the said term of —— years granted therein by the said indenture of lease (except the last day of the said term): PROVIDED always, that if the said sum of £——, with interest thereon, shall be paid on the —— day of —— next, according to the foregoing covenant in that behalf, the demise hereby made shall be void: AND the said A. B. hereby covenants with the said C. D., that he the said A. B., his executors, administrators, and assigns, will at all times during the continuance of this security, keep the said messuage and premises insured against loss or damage by fire, in the sum of £—— at least, in conformity with the covenant in that behalf contained in the said indenture of lease, and will on demand produce to the said C. D., his executors, administrators, or assigns, the policy of such insurance and the receipt for every premium payable in respect thereof: AND IT IS HEREBY DECLARED, that after any sale of the last day of

Covenant to pay principal and interest.

Demise of parcels to mortgagee.

Proviso for redemption.

Covenant by mortgagor to keep premises insured according to covenant in lease.

After a sale

said premises or any part thereof, under the statutory power of sale, the said A. B., or other the person in whom the premises shall for the time being be vested for the last day of the term granted by the hereinbefore recited indenture of lease, shall stand possessed thereof, In trust for the purchaser, and to be assigned and disposed of as he may direct: AND IT IS HEREBY DECLARED (*a*), that no lease made by the said A. B., his executors, administrators, or assigns of the said premises, or any part thereof, during the continuance of this security shall have effect by force or virtue of section 18 of the Conveyancing and Law of Property Act, 1881, unless the said C. D., his executors, administrators, or assigns, shall consent thereto in writing.

LEASEHOLDS BY DEMISE.

the term to be held in trust for purchaser.

Power of leasing conferred by Act on mortgagor not to be exercised without consent.

IN WITNESS, &c.

No. X.

MORTGAGE *of* LEASEHOLDS *by* ASSIGNMENT.

LEASEHOLDS BY ASSIGNMENT.

THIS INDENTURE, &c. (*same as last Precedent to the end of first testatum*): AND THIS INDENTURE ALSO WITNESSETH, that for the consideration aforesaid the said A. B., as beneficial owner, hereby assigns unto the said C. D., ALL the messuage and premises comprised in the hereinbefore recited indenture of lease: TO HOLD the same unto the said C. D. for all the residue now unexpired of the said term of —— years granted therein by the said indenture of lease: PROVIDED ALWAYS, that if the said sum of £——, with interest thereon, shall be paid on the said —— day of —— next, according to the foregoing covenant in that behalf, the said premises shall, at the request and cost of the said A. B., his executors, administrators, or assigns, be reassigned to him or them (*Covenant for insurance, and declaration as to leasing power, if desired, suprà*, pp. 526, 527).

Mortgagor assigns leaseholds to mortgagee.

Proviso for redemption.

IN WITNESS, &c.

(*a*) In a mortgage of a leasehold house, this clause will be generally proper. If it is desired to negative the power to grant building leases only, insert "building" before "lease."

No. XI.

LEASEHOLDS WITH POWER OF SALE.

MORTGAGE *of a* LEASEHOLD MESSUAGE *by* DEMISE, *with* POWER *of* SALE (*a*).

Parties. THIS INDENTURE, made the —— day of ——, BETWEEN A. B. of, &c. (*mortgagor*), of the one part, and C. D. of, &c. (*mortgagee*), of the other part: (*Recite lease and agreement for loan, as in Precedent No. IX.*):

Witnessing part. NOW THIS INDENTURE WITNESSETH, that in consideration of the sum of £——, paid to the said A. B. by the said C. D. on or before the execution of these presents (the receipt whereof the said A. B. hereby acknowledges), the said A. B. hereby covenants, &c. (*same as in Precedent No. IX., down to end of covenant for insurance against fire*):

Power of sale. AND IT IS HEREBY AGREED AND DECLARED, that it shall be lawful for the said C. D., his executors, administrators, or assigns, at any time or times, without any further consent on the part of the said A. B., his executors, administrators, or assigns, to sell the messuage and premises hereby demised, or expressed so to be, or any part thereof, either by public auction or private contract, and either with or without special conditions or stipulations relative to title or otherwise, with power to buy in at sales by auction, to rescind contracts for sale, and to resell without being answerable for any loss or diminution in price, and with power also to execute assurances, give effectual receipts for the purchase-money, and do all other acts and things for completing the sale which the said C. D., his executors, administrators, or assigns shall think proper:

Trusts of purchase money. AND IT IS HEREBY AGREED AND DECLARED, that the said C. D., his executors, administrators, or assigns shall, with and out of the moneys to arise from any such sale as aforesaid, in the first place pay and retain the costs and expenses attending such sale or otherwise incurred in relation to this security, and in the next place pay and satisfy the moneys which shall then be owing upon this security, and shall pay the surplus (if any) to the said A. B., his executors, administrators, or assigns:

Power only to be exercised in case of default, &c. PROVIDED ALWAYS, and it is hereby agreed and declared, that the power of sale hereinbefore contained shall not be exercised unless default

(*a*) See note at p. 522, *suprà*.

shall be made in payment of the said principal sum of £—— and interest, or some part thereof respectively, on the said —— day of —— next, and also for the space of three calendar months next after a notice in writing requiring payment thereof shall by or on behalf of the said C. D., his executors, administrators, or assigns, have been given to or left at the usual or last known place of abode in England or Wales of the said A. B., or one of his executors or administrators, or left upon or affixed to some part of the premises hereby demised, or unless default shall be made in some half-yearly payment of interest, or some part thereof, for the space of two calendar months after the time hereby appointed for such payment: PROVIDED ALWAYS, and it is hereby declared, that no purchaser at any sale made under the power hereinbefore contained shall be bound or concerned to see or inquire whether any such default has been made, or whether any such notice has been given or left or affixed as aforesaid, or otherwise as to the necessity or propriety of such sale, or be affected by notice that no such default has been made, or notice given or left or affixed as aforesaid, or that the sale is otherwise unnecessary or improper: AND IT IS HEREBY DECLARED, that the said power of sale may be exercised by any person or persons for the time being entitled to receive and give a discharge for the moneys for the time being owing on the security of these presents: AND IT IS HEREBY ALSO DECLARED, that after any sale made under the aforesaid power, the said A. B., his executors, administrators, and assigns, shall stand possessed of the premises sold for the last day of the term granted by the hereinbefore recited indenture of lease, In trust for the purchaser, his executors, administrators, and assigns, and to be assigned and disposed of as he or they may direct. (*Declaration as to leasing power, suprà*, p. 527.)

LEASEHOLDS WITH POWER OF SALE.

Purchaser not bound to inquire as to default, &c.

Power may be exercised by any person entitled to give a discharge for mortgage-money.

After a sale last day of the term to be held in trust for purchaser.

IN WITNESS, &c.

No. XII.

OF PROPERTY COMPRISED IN SEVERAL LEASES.

MORTGAGE *of* PROPERTY *comprised in several* LEASES *by* ASSIGNMENT. POWERS *of* SALE, LETTING *and* GRANTING UNDERLEASES.

Parties.

THIS INDENTURE, made the —— day of ——, BETWEEN A. B., of, &c. (*mortgagor*), of the one part, and C. D., of, &c. (*mortgagee*), of the other part: (*Recite several leases to* A. B.): NOW THIS INDENTURE WITNESSETH, that in consideration of the sum of £—— paid to the said A. B. by the said C. D. on or before the execution of these presents (the receipt whereof the said A. B. hereby acknowledges), the said A. B., &c. (*covenant to pay principal and interest, suprà*, p. 515): AND THIS INDENTURE ALSO WITNESSETH, that for the consideration aforesaid the said A. B., as beneficial owner, hereby assigns unto the said C. D., ALL the lands, hereditaments, and premises comprised in and demised by the several hereinbefore recited indentures of lease, And all buildings which have been erected on the said lands, or on any part thereof: TO HOLD the same unto the said C. D. for all the residue now to come of the said several terms of years granted by the said recited indentures of lease respectively: PROVIDED ALWAYS that if the said sum of £——, with interest thereon, shall be paid on the —— day of —— next, according to the foregoing covenant in that behalf, the said premises shall, at the request and cost of the said A. B., his executors, administrators, or assigns, be reassigned to him or them; AND THE SAID A. B. hereby covenants with the said C. D. as follows (namely), that he, the said A. B., his executors, administrators, or assigns, will at all times during the continuance of this security keep the messuages and buildings comprised in this security insured against loss or damage by fire, in conformity with the covenants for insurance contained in the several indentures of lease under which the same are respectively holden as aforesaid, and so that the total amount of such insurance shall not be less than £——, and will duly pay the premiums and other sums of money payable for that purpose, and immediately after every such payment will deliver to the said C. D., his executors, administrators, or

Mortgagor assigns parcels

to mortgagee for residue of term.

Proviso for redemption.

Covenant by mortgagor to keep buildings insured.

assigns, the receipt for the same: [And that if the said A. B., his executors, administrators, or assigns, shall at any time neglect to keep the said premises insured as aforesaid, or to deliver any such receipt as aforesaid, then and in every such case it shall be lawful for the said C. D., his executors, administrators, or assigns, to insure and keep insured the said premises to the amount aforesaid, and all sums of money expended by him or them in or about such insurance, with interest thereon after the rate of £5 per cent. per annum, computed from the time or respective times of advancing the same, shall be repaid to him or them by the said A. B., his heirs, executors, or administrators, on demand, and in the meantime shall be a charge on the hereditaments and premises hereby assigned, or expressed so to be, in addition to the said principal sum of £——, and the interest thereof (*a*)]: And it is hereby agreed and declared (*b*), that it shall be lawful for the said C. D., his executors, administrators, or assigns, at any time or times, without any further consent on the part of the said A. B., his executors, administrators, or assigns, to sell the hereditaments and premises hereby assigned, or expressed so to be, or any of them, either together or in lots, and either by public auction or private contract: And also, at any time or times, and either preparatory to any such sale or otherwise, to let the said premises, or any part or parts thereof, either from year to year or otherwise, or to grant any underlease or underleases thereof for any derivative term or terms of years, and either in possession or reversion, and either with or without taking a premium for the making thereof, and at such yearly or other rents, and subject to such covenants and conditions, and generally upon such terms as he or they shall think proper, and with full power, upon any such sale, letting, or underlease, to make any conditions or stipulations relative to title or otherwise which the said C. D., his executors, administrators, or assigns, may think proper, and also with power to buy in the said premises, or any part thereof, at any sale by auction, or to rescind or vary any contract for the sale, letting, or underlease thereof, and to re-sell, re-let, and re-demise the same from time to time without being answerable for any loss or diminution in price or rent occasioned

OF PROPERTY COMPRISED IN SEVERAL LEASES.

Power to mortgagee to insure in case of default by mortgagor.

Power to mortgagee to sell, let, and make underlease

(*a*) The words in brackets may be safely omitted.

(*b*) As this power of sale and leasing is somewhat special it is retained instead of relying on the statutory power.

OF PROPERTY COMPRISED IN SEVERAL LEASES.

thereby, or consequent thereon, and with power also to give time for the payment of the purchase-money or premiums, or any part or parts thereof respectively, and upon such security, personal or otherwise, or without security, as he or they may think fit, and with power also to execute assurances, give effectual receipts for any purchase-money or premiums, and do all other acts and things for completing any such sale, letting, or underlease, which the said C. D., his executors, administrators, or assigns, shall think proper: AND IT IS HEREBY AGREED AND DECLARED, that the said C. D., his executors, administrators, or assigns, shall, with and out of the moneys to arise from any such sale, letting, or underlease as aforesaid, in the first place pay and retain the costs and expenses attending such sale, letting, or underlease, or otherwise incurred in relation to this security, and in the next place pay and satisfy the moneys which shall then be owing upon the security of these presents, and shall pay the surplus (if any) to the said A. B., his executors, administrators, or assigns: PROVIDED ALWAYS, and it is hereby agreed and declared, that the powers of sale, letting, and granting underleases hereinbefore contained shall not be exercised unless default shall be made in payment of the said sum of £——, or the interest thereof, or some part thereof respectively, on the said —— day of —— next, and also for the space of three calendar months after a notice in writing requiring payment thereof shall by or on behalf of the said C. D., his executors, administrators, or assigns, have been given to or left at the usual or last known place of abode in England or Wales of the said A. B., or one of his executors or administrators, or left upon or affixed to some part of the premises hereby assigned, or expressed so to be, or unless default shall be made in some half-yearly payment of interest, or some part thereof, for the space of two calendar months after the time hereby appointed for such payment: PROVIDED ALWAYS, and it is hereby declared, that no purchaser, tenant, or lessee, upon any sale, letting, or underlease made under the powers hereinbefore contained shall be bound or concerned to see or inquire whether any such default has been made, or whether any such notice has been given or left or affixed as aforesaid, or otherwise as to the necessity or propriety of such sale, letting, or underlease, or be affected by notice that no such default has been made or notice given or left or affixed as afore-

Declaration of trusts of moneys to arise from sales, leases, or underleases.

Power only to be exercised in case of default.

Purchaser or lessee not bound to inquire as to default.

said, or that the sale, letting, or underlease is otherwise unnecessary or improper: AND IT IS HEREBY DECLARED, that the said powers of sale, letting, and underleasing may be exercised by any person or persons for the time being entitled to receive and give a discharge for the moneys for the time being owing on the security of these presents. (*Declaration as to leasing power, suprà*, p. 527.)

OF PROPERTY COMPRISED IN SEVERAL LEASES.

Power may be exercised by any person entitled to give discharge.

IN WITNESS, &c.

No. XIII.

MORTGAGE *of a* LEASEHOLD ESTATE *for* LIVES *to* TWO MORTGAGEES, *who make the advance on a* JOINT ACCOUNT, *with provisions for renewal* (*a*).

LEASEHOLDS FOR LIVES.

THIS INDENTURE, made the —— day of ——, BETWEEN A. B., of, &c. (*mortgagor*), of the one part, and C. D. and E. F., of, &c. (*mortgagees*), of the other part: WHEREAS, &c. (*Recite the lease for lives*): NOW THIS INDENTURE WITNESSETH, that in consideration of the sum of £—— paid to the said A. B. by the said C. D. and E. F. on or before the execution of these presents, out of moneys belonging to them on a joint account (*the receipt, &c.*), the said A. B. covenants, &c. (*Covenants to pay principal and interest, suprà*, p. 515): AND THIS INDENTURE ALSO WITNESSETH, that for the consideration aforesaid the said A. B., as beneficial owner, hereby demises unto the said C. D. and E. F., ALL THOSE the said several pieces or parcels of ground, messuages, or tenements, buildings, hereditaments, and premises comprised in the hereinbefore recited indenture of lease, which premises are underlet as in the schedule hereto is mentioned, TOGETHER with the rents reserved by the several indentures of underlease mentioned in the

Parties.

Witnessing part.

Consideration.

Mortgagor grants parcels.

(*a*) When renewable leaseholds are made the subject of mortgage, the mortgage should contain a covenant by the mortgagor to renew, as he could not otherwise be compelled to do so. But the mortgagee may renew even in the absence of an express power to do so, and may hold the renewed lease as a security for the moneys he has expended in effecting the renewal, together with interest on such moneys (3 Atk. 4).

LEASEHOLDS FOR LIVES.

said schedule, and the benefit of the covenants therein contained, and on the part of the several under-lessees to be respectively observed and performed: To HOLD the same unto the said C. D. and E. F., for the term of ninety-nine years, computed from the date of these presents, if the said —— and —— and ——, or the survivors and survivor of them shall so long live, subject as to such of the said hereditaments as are therein respectively comprised as aforesaid to the said underleases mentioned or referred to in the schedule hereto: PROVIDED ALWAYS, that if the said sum of £——, with interest thereon, shall be paid on the —— day of —— next, according to the foregoing covenant in that behalf, then and in such case the demise hereby made shall be void (*Covenant by mortgagor to keep premises insured against fire, suprà*, p. 520): AND THE SAID A. B. hereby covenants with the said C. D. and E. F., that he the said A. B., his heirs, executors, administrators, or assigns, will from time to time, during the continuance of this security, on the death of any person or persons for whose life or lives the said leasehold premises shall for the time being be held, join and concur with the said C. D. and E. F., their executors, administrators, or assigns, in obtaining a renewal of the subsisting lease for the time being of the said leasehold premises for a new life or new lives, as the case may be, to be added to the lives or life which shall be then in being, and will whenever any such renewed lease shall be obtained, forthwith cause the said premises to be vested in the said C. D. and E. F., their executors, administrators, and assigns, for a term of ninety-nine years, determinable on the life or lives of the person or persons named therein, but subject to the subsisting right or equity of redemption of the said A. B., his heirs or assigns, under or by virtue of these presents: AND ALSO will pay the fines, fees, and other expenses of procuring or otherwise attending every such renewal of the said lease, and the vesting of the same in the mortgagees as aforesaid: and that if for the space of three calendar months next after the dropping of any life upon which the said now subsisting lease or any renewed lease of the said leasehold premises is or shall be held, the said A. B., his heirs, executors, administrators, or assigns, shall not make or concur in such renewal as aforesaid, it shall be lawful for the said C. D. and E. F., their executors, administrators, or assigns, if they shall think proper, by surrender of the then

To mortgagees for lives of *cestuis que vie*.

Proviso for redemption.

Covenant by mortgagor to concur in all acts for renewal.

That if mortgagor make default mortgagee may renew.

subsisting lease of the said premises or otherwise, to obtain such renewal of such lease for the time being as aforesaid, subject to such right or equity of redemption as aforesaid, and in such case the said A. B., his heirs, executors, or administrators, will immediately thereupon pay and reimburse unto the said C. D. and E. F., their executors, administrators, or assigns, such sum or sums of money as they shall have paid for the fines, fees, or other expenses in or about the procuring or otherwise attending every such renewal, together with interest for the same, at the rate of £5 per cent. per annum, to be computed from the time or respective times of the payment thereof: And such sum or sums of money shall in the meantime be charged on the said hereditaments and premises in addition to the said principal sum of £—— and the interest thereof. (*Declaration as to leasing power, suprà*, p. 527.)

LEASEHOLDS FOR LIVES.

Expenses of renewal to be borne by mortgagor, and to be charged on the premises

In witness, &c.

The Schedule above referred to.

No. XIV.

MORTGAGE *of* Freeholds *and* Copyholds *to persons* Lending *on a* Joint Account.

FREEHOLDS AND COPYHOLDS TO SEVERAL.

THIS INDENTURE, made the —— day of ——, Between A. B., of, &c. (*mortgagor*), of the one part, and C. D., of, &c., E. F. of, &c., and G. H. of, &c. (*mortgagees*), of the other part: WITNESSETH, that in consideration of the sum of £—— paid to the said A. B. by the said C. D., E. F., and G. H., on or before the execution of these presents, out of moneys belonging to them on a joint account (*the receipt, &c.*), the said A. B. hereby covenants, &c. (*Covenant to pay principal and interest, suprà*, p. 520): AND THIS INDENTURE FURTHER WITNESSETH, that for the consideration aforesaid, the said A. B., as beneficial owner, hereby conveys (*Conveyance of freeholds to C. D., E. F., and G. H., in fee; proviso for redemption, suprà*, p. 520): AND THIS INDEN-

Parties.

Conveyance of freeholds subject to redemption

FREEHOLDS AND COPYHOLDS TO SEVERAL.

TURE ALSO WITNESSETH, that for the consideration aforesaid, the said A. B., as beneficial owner, hereby covenants with the said C. D., E. F., and G. H., THAT HE the said A. B. will forthwith, at his own cost, surrender or cause to be surrendered into the hands of the lord of the manor of ——, according to the custom thereof, ALL, &c. (*parcels*): To THE USE of the said C. D., E. F., and G. H., in customary fee simple, according to the custom of the said manor, by and under the rents, heriots, suits, and services therefor due and of right accustomed: SUBJECT NEVERTHELESS TO A CONDITION for making void the same corresponding to the proviso for redemption hereinbefore contained as to the freehold hereditaments hereinbefore conveyed. (*Declaration as to leasing power, if desired, suprà*, p. 520.)

Covenant to surrender copyholds,

subject to a condition corresponding to proviso for redemption.

IN WITNESS, &c.

No. XV.

FREEHOLDS AND LEASEHOLDS.

MORTGAGE *of* FREEHOLDS *and* LEASEHOLDS.

Parties.

THIS INDENTURE, made the —— day of ——, BETWEEN A. B., of, &c. (*mortgagor*), of the one part, and C. D., of, &c. (*mortgagee*), of the other part (*Recite lease to A. B., suprà*, p. 526), WITNESSETH, that in consideration, &c. (*Covenant by mortgagee to principal and interest, suprà*, p. 515): AND THIS INDENTURE FURTHER WITNESSETH, that for the consideration aforesaid the said A. B., as beneficial owner, &c. (*Conveyance of freeholds to mortgagee, suprà*, p. 515), subject to the proviso for redemption hereinafter contained: AND THIS INDENTURE ALSO WITNESSETH, that for the consideration aforesaid the said A. B., as beneficial owner, hereby demises (*Demise of leaseholds to C. D. for residue of term, wanting the last day, suprà*, p. 526): Subject to the proviso for redemption hereinafter contained: PROVIDED ALWAYS, that if the said sum of £—— with interest thereon shall be paid on the —— day of —— next, according to the foregoing covenant in that behalf,

Conveyance of freeholds.

Demise of leaseholds.

Proviso for redemption.

then and in such case the freehold premises hereby conveyed shall, at the request and cost of the said A. B., his heirs or assigns, be reconveyed to him or them, and the demise hereby made of the said leasehold premises shall be void (*After a sale, purchaser to be entitled to last day of term, suprà*, p. 527): [AND IT IS HEREBY DECLARED that no lease made by the said A. B., his heirs, executors, administrators, or assigns, of the said premises or any part thereof during the continuance of this security shall have effect by force or virtue of section 18 of the Conveyancing and Law of Property Act, 1881, unless the said C. D., his heirs, executors, administrators, or assigns shall consent thereto in writing.]

FREEHOLDS AND LEASEHOLDS.

Declaration as to leasing powers.

IN WITNESS, &c.

No. XVI.

MORTGAGE *of* FREEHOLDS *and* COPYHOLDS, *and of* LEASEHOLDS *for a long* TERM.

FREEHOLDS, COPYHOLDS, AND LEASEHOLDS.

THIS INDENTURE, made the —— day of ——, BETWEEN A. B., of, &c. (*mortgagor*), of the one part, and C. D., of, &c. (*mortgagee*), of the other part, WITNESSETH, that in consideration, &c. (*Covenant by mortgagee to pay principal and interest, suprà*, p. 515): AND THIS INDENTURE FURTHER WITNESSETH, that for the consideration aforesaid, &c., the said A. B., as beneficial owner, &c. (*Conveyance of freeholds to C. D., in fee, suprà*, p. 515), subject to the proviso for redemption hereinafter contained: AND THIS INDENTURE FURTHER WITNESSETH, that for the consideration aforesaid, the said A. B., as beneficial owner (*Covenant to surrender copyholds to the use of C. D. in fee, suprà*, p. 524), subject to a condition for making void the same, corresponding to the proviso for redemption hereinafter contained as to the freehold and leasehold hereditaments hereby conveyed and assigned respectively: AND THIS INDENTURE ALSO WITNESSETH, that for the consideration aforesaid, the said A. B., as beneficial owner, hereby assigns

Parties.

First witnessing part.

Conveyance of freeholds.

Second witnessing part.

Covenant to surrender copyholds.

Third witnessing part.

Assignment

FREEHOLDS, LEASEHOLDS, AND COPYHOLDS.

unto the said C. D., ALL, &c. (*parcels*), (which hereditaments and premises last hereinbefore described were, by an indenture, dated, &c., and made, &c., demised unto X. Y., his executors, administrators, and assigns, for the term of 1000 years, and have by virtue of divers assignments and acts in the law become vested in the said A. B. for the residue of the said term): To HOLD the same unto the said C. D. for all the residue now unexpired of the said term of 1000 years, subject to the proviso for redemption hereinafter contained: PROVIDED ALWAYS, that if the said sum of £—— with interest thereon shall be paid on the —— day of —— next, according to the foregoing covenant in that behalf, then and in such case the said freehold and leasehold premises shall, at the request and cost of the said A. B., his heirs, executors, administrators, or assigns, be reconveyed and reassigned to him or them. (*Declaration as to leasing power, if desired, suprà*, p. 537.)

of leaseholds

to mortgagee.

Proviso for redemption.

IN WITNESS, &c.

No. XVII.

TO SECURE A SUM PAYABLE BY INSTALMENTS.

MORTGAGE *of* FREEHOLDS *by* APPOINTMENT *and* CONVEYANCE *in fee, and* PROVISION *for* PAYMENT *of* MORTGAGE-MONEY *by* INSTALMENTS.

Parties.

THIS INDENTURE, made the —— day of ——, BETWEEN A. B., of, &c. (*mortgagor*), of the one part, and C. D., of, &c. (*mortgagee*), of the other part (*Recite conveyance to uses to bar dower in favour of A. B.*): NOW THIS INDENTURE WITNESSETH, that in consideration, &c. (*the receipt, &c.*), the said A. B., &c. (*Covenant to pay principal and interest, suprà*, p. 515): AND THIS INDENTURE ALSO WITNESSETH, that for the consideration aforesaid, the said A. B., as beneficial owner, in exercise of the power for this purpose given to him by the hereinbefore recited indenture as aforesaid, and of all other powers (if any) him hereunto enabling, hereby appoints and by way of further assurance, conveys unto the said C. D., ALL, &c. (*parcels, —Habendum to mortgagee in fee, proviso for redemption, suprà*,

Witnessing part.

Mortgagor appoints and conveys to mortgagee.

p. 515): PROVIDED ALWAYS, and it is hereby agreed and declared, that if the said principal sum of £—— hereby secured shall be paid by the instalments following (that is to say), the sum of £—— on the 31st day of December next, or within thirty days thereafter, and the sum of £—— on the 31st day of December in every succeeding year, or within thirty days thereafter, until the whole of the said principal sum shall be paid, and if every half-yearly payment of interest due under these presents shall be paid upon the day hereinbefore appointed for the payment thereof, or within thirty days thereafter, [and if the covenant hereinbefore contained for keeping the said premises insured against loss or damage by fire shall be duly observed and performed], then and in such case the said C. D., his executors, administrators, or assigns, shall not nor will require payment of the said principal sum, or any part thereof, otherwise than by such instalments as aforesaid: PROVIDED ALWAYS, and it is hereby agreed and declared, that upon any sale under the statutory power in that behalf, the purchaser shall not be bound or concerned to see or inquire whether any default has been made in payment of the said principal sum or any instalment thereof, or any interest thereon, contrary to the proviso last hereinbefore contained, or otherwise as to the necessity or propriety of the sale or be affected by notice that no such default has been made as aforesaid, or that the sale is otherwise unnecessary or improper. (*Declaration as to leasing power, if desired, suprà*, p. 516.)

TO SECURE A SUM PAYABLE BY INSTALMENTS.

Proviso for payment of mortgage-money by instalments.

Purchaser not bound to inquire whether default has been made, &c.

IN WITNESS, &c.

No. XVIII.

MORTGAGE *in* FEE *of* LANDS *in the* POSSESSION *of the* MORTGAGOR, *who* ATTORNS TENANT *to the* MORTGAGEE (*a*).

BY MORTGAGOR IN POSSESSION WHO ATTORNS TENANT.

THIS INDENTURE, made the —— day of ——, BETWEEN A. B., of, &c. (*mortgagor*), of the one part, and C. D., of, &c.

Parties.

(*a*) When the mortgagor is in possession of the mortgaged property, it is often desirable to confer upon the mortgagee a power of distress, as a further

Best mode of conferring upon

BY MORTGAGOR IN POSSESSION WHO ATTORNS TENANT.

(*mortgagee*), of the other part (*the same as Precedent No. I., suprà*, p. 515, *adding at the end the following clause*), AND the said A. B. hereby attorns tenant to the said C. D. of the hereditaments and premises hereby conveyed, at the yearly rent of £—— (*a sum equal to a year's interest on the principal sum*), to be paid half-yearly on the —— day of ——, and the —— day of —— (*the days appointed for payment of interest*) : PROVIDED ALWAYS, that the said C. D., his heirs or assigns, may at any time after the said —— day of —— next, enter into and upon the said hereditaments and premises, or any part thereof, and determine the tenancy hereby created, without giving to the said A. B. any notice to quit (*b*).

Mortgagor attorns tenant to the mortgagee.

Mortgagee may determine tenancy without notice.

IN WITNESS, &c.

mortgagee a power to distrain.

security for the punctual payment of the interest. The most effectual mode of conferring such power is by the mortgagor attorning tenant to the mortgagee at a rent at least equal to the interest, and payable on the same days. A mere power of distress without attornment is not effectual, as the mortgagor, having no estate at law, cannot create a legal rent-charge with a power of distress, and the power would only operate as a licence. (See Freeman *v.* Edwards, 2 Ex. R. 732.) Care must be taken that the mortgagee does not preclude himself from entering without notice and determining the tenancy. (See Doe *d.* Jarrod *v.* Alley, 12 Ad. & El. 481 ; Doe *d.* Snell *v.* Tom, 4 Q. B. Rep. 615 ; West *v.* Fritch, 3 Ex. Rep. 216 ; Pinhorn *v.* Sonster, 8 Ex. Rep. 763 ; Brown *v.* Metropolitan Counties Life Assurance Society, 28 Law J. (N. S.) Q. B. 236.)

A sham rent in attornment clause not supported.

In some cases an attornment clause has been framed so as to make the mortgagor stand as yearly tenant to the mortgagee at a rent enormously exceeding the annual value, say £10,000 a year ; but such an arrangement being a mere device to give to the mortgagee an additional security, in the event of the bankruptcy of the mortgagor, in respect of a *sham rent*, has been very properly decided to be void, as a fraud on the bankrupt law. (*Ex parte* Williams, 7 Ch. D. 138 ; *Ex parte* Jackson, 14 Ch. D. 725. See also *Ex parte* Mackay, L. R. 8 Ch. 643 ; *In re* Stockton Iron Furnace Company, 10 Ch. D. 335 ; *Ex parte* Harrison, 18 Ch. D. 127 ; *Ex parte* Isherwood, W. N. 1882, p. 73, *infra*, p. 577, note.

Attornment to second mortgagee.

An attornment by a mortgagor to a second mortgagee is valid (Morton *v.* Woods, L. R. 4 Q. B. 293), notwithstanding that he may have already attorned tenant to the first mortgagee of the same property : *Ex parte* Punnett, 16 Ch. D. 227.)

Stamp.

It is considered that the introduction of an attornment clause in a mortgage would not subject the deed to a lease stamp.

(*b*) It is apprehended that the above attornment clause is not a bill of sale within meaning of section 6 of the Bills of Sale Act, 1878. See the proviso at the end of that section.

No. XIX.

MORTGAGE *of* LAND *in* EXERCISE *of a general* POWER *of* APPOINTMENT. MORTGAGE IN EXERCISE OF POWER.

THIS INDENTURE, made, &c., BETWEEN A. B., of, &c. (*mortgagor*), of the one part, and C. D., of, &c. (*mortgagee*), of the other part (*Recite conveyance to mortgagor to such uses as he might by deed appoint, and subject thereto to uses in strict settlement*): NOW THIS INDENTURE WITNESSETH, that in consideration, &c. (*the receipt, &c.*), THE said A. B., &c. (*Covenants to pay principal and interest, suprà*, p. 515): AND THIS INDENTURE ALSO WITNESSETH, that for the consideration aforesaid the said A. B., as beneficial owner, in exercise of the power for this purpose given to him by the hereinbefore recited indenture as aforesaid, and of all other powers (if any) him hereunto enabling, hereby appoints that ALL, &c. (*parcels*), shall go, remain, and be to the use of the said C. D., in fee simple: PROVIDED ALWAYS, that if the said sum of £——, with interest thereon, shall be paid on the —— day of —— next, according to the foregoing covenant in that behalf, the appointment hereby made shall be void: PROVIDED ALWAYS, and it is hereby declared that as between the said A. B. and the hereditaments and premises hereby appointed, the said hereditaments and premises shall be the primary security for the principal sum hereby secured, and the interest thereof, But this proviso shall not affect the said C. D., or his right to resort to his several securities in such order and manner as he may think fit.

Parties.

Recite mortgage to such uses as mortgagor should appoint.

Appointment of parcels to mortgagee.

Proviso for redemption.

Declaration as to order of liability of mortgagor and mortgaged property.

IN WITNESS, &c.

No. XX.

BY A MARRIED WOMAN.

MORTGAGE *in* FEE *by* HUSBAND *and* WIFE *married before the 1st of January*, 1883, *of* FREEHOLDS *belonging to* WIFE, *and not being her* SEPARATE PROPERTY.

Parties.

Recite title of female mortgagor.

Agreement for loan.

Witnessing part.

Consideration.

Husband and wife

convey parcels to mortgagee in fee.

Proviso for redemption.

Covenant by husband for payment of principal and interest.

THIS INDENTURE, made, &c., BETWEEN A. B., of, &c., and C. his wife (*mortgagor*), of the one part, and E. F., of, &c. (*mortgagee*), of the other part (*Recite death of X. Y., father of C. B., intestate, leaving C. B. his heiress-at-law, and that X. Y. was at his death seised in fee simple of the hereditaments hereinafter described, and intended to be hereby conveyed*): AND WHEREAS the said E. F. has agreed to lend to the said A. B. and C. his wife, the sum of £——, upon having the repayment thereof, with interest, secured to him in the manner hereinafter expressed: NOW THIS INDENTURE WITNESSETH, that in consideration of the sum of £—— to the said A. B. and C., his wife, paid by the said E. F. on or before the execution of these presents (*the receipt, &c.*), THE said A. B. and C., his wife, as beneficial owners, do by this deed, which is intended to be acknowledged by the said C. B. pursuant to the statute in that behalf, convey unto the said E. F.: ALL, &c. (*parcels—Habendum to E. F. in fee, suprà*, p. 515): PROVIDED ALWAYS, that if the said A. B. and C., his wife, or either of them, or any person claiming under them or either of them, shall, on the —— day of —— next, pay to the said E. F., the sum of £——, with interest for the same, after the rate of £—— per cent. per annum, computed from the date of these presents, then and in such case the said hereditaments and premises shall, at the request and cost of the person or persons making such payment, be re-conveyed unto and to the use of the said C. B., in fee simple: AND by way of further security the said A. B. hereby covenants with the said E. F. to pay to him the said sum of £——, with interest thereon, as aforesaid, on the said —— day of —— next, and also so long after that day as any principal money remains due under these presents, to pay to him interest thereon after the same rate by equal half-yearly payments on

the —— day of ——, and the —— day of ——: PROVIDED ALWAYS, and it is hereby declared by the said A. B. and C., his wife, that as between the said A. B., and the hereditaments and premises hereby conveyed, the said hereditaments and premises shall be the primary security for the principal sum and interest hereby secured: But this proviso shall not affect the said E. F., or his right to resort to his several securities in such order and manner as he may think fit (*a*). (*Declaration as to leasing power, if desired, suprà, p.* 516.)

BY A MARRIED WOMAN.

Proviso that the mortgaged property shall be the primary security.

IN WITNESS, &c.

No. XXI.

MORTGAGE *by* HUSBAND *of his* WIFE'S LEASEHOLDS, *the same having been* ACQUIRED *by her, and her* MARRIAGE *having taken place,* BEFORE *the* 1*st of* JANUARY, 1883.

MORTGAGE BY HUSBAND OF WIFE'S LEASEHOLDS.

THIS INDENTURE, made the —— day of ——, BETWEEN A. B., of, &c. (*mortgagor*), of the one part, and C. D., of, &c. (*mortgagee*), of the other part: WHEREAS by an indenture dated the —— day of ——, 1880, and made between G. H., Esq., of the one part, and E. F., spinster, of the other part, ALL that piece of land (*here describe the property*), and a messuage or dwelling-house and other buildings which have been erected thereon, were demised by the said G. H. unto the said E. F. for the term of 10,000 years thenceforth next ensuing at a peppercorn rent, and subject to certain lessees' covenants as to user: AND WHEREAS the said A. B. intermarried with the said E. F. on the —— day of ——, 1882, but no settlement was executed by the said E. F. on such marriage affecting the said

Parties.

Recite lease for 10,000 years at nominal rent.

Marriage of lessee with mortgagor before 1883.

(*a*) If, however, the intention is that the husband shall be primarily liable, the proviso will be as follows :—" Provided always, and it is hereby declared by the said A. B. and C., his wife, that as between, &c., the said A. B. shall be primarily liable to the payment of the said principal sum and interest hereby secured : but this proviso, &c."

MORTGAGE BY HUSBAND OF WIFE'S LEASEHOLDS.

leasehold premises: AND WHEREAS the said C. D. has agreed, at the request of the said A. B., to lend to him the sum of £—— upon having the repayment thereof, with interest, secured to him in manner hereinafter expressed: NOW THIS INDENTURE WITNESSETH that in consideration of the sum of £—— paid to the said A. B. by the said C. D. on or before the execution of these presents, the receipt whereof the said A. B. hereby acknowledges, the said A. B. hereby covenants (*Covenant by A. B. to pay principal money and interest, suprà*, p. 515): AND THIS INDENTURE ALSO WITNESSETH that for the consideration aforesaid the said A. B. as beneficial owner hereby assigns unto the said C. D. THE PIECE of ground, messuage, or dwelling-house, buildings and premises comprised in and demised by the said recited indenture, TO HOLD the same unto the said E. F. for all the residue now unexpired of the said term of 10,000 years: PROVIDED ALWAYS that if the said sum of £—— with interest thereon shall be paid on the said —— day of —— next, according to the foregoing covenant in that behalf, the aforesaid assignment shall be void. (*Covenant by the said A. B. for insurance against fire, suprà, p.* 516.) PROVIDED ALWAYS, that as between the general estate of the said A. B. and the leasehold premises hereby assigned, the said leasehold premises shall be the primary fund for the payment of the said principal money and interest (*Declaration as to leasing power, suprà*, p. 516.)

Agreement for loan.

Consideration.

Mortgagor covenants to pay principal and interest.

Mortgagor assigns leaseholds of his wife.

Proviso for redemption.

Declaration that leaseholds shall be primary fund.

IN WITNESS, &c.

No. XXII.

MORTGAGE BY WIFE OF SEPARATE PROPERTY UNDER MARRIED WOMEN'S PROPERTY ACT, 1882.

MORTGAGE *by* MARRIED WOMAN *of* FREEHOLDS *or* COPYHOLDS *or* LEASEHOLDS, *being her* SEPARATE PROPERTY *under the* MARRIED WOMEN'S PROPERTY ACT, 1882 (*a*).

THIS INDENTURE, made the —— day of ——, BETWEEN A. B., the wife of E. B., of, &c., to whom she was mar-

Parties.

(*a*) See *suprà*, p. 187; and also Dissertation on Husband and Wife, in Vol. II.

MORTGAGE BY WIFE OF SEPARATE PROPERTY UNDER MARRIED WOMEN'S PROPERTY ACT, 1882.

ried since the 31st day of December, 1882 (*a*) (*mortgagor*), of the one part, and C. D., of, &c. (*mortgagee*), of the other part (*b*): WITNESSETH, &c. (*The rest of the deed will be in the same form as Precedent No. I., suprà, p. 515, as to freeholds; or No. VII., suprà, p. 524, as to copyholds; or No. IX., suprà, p. 525, as to leaseholds. Substituting "she" for "he," and "her" for "him," when necessary.*)

IN WITNESS, &c.

No. XXIII.

MORTGAGE *of an* EQUITY *of* REDEMPTION.

OF EQUITY OF REDEMPTION.

THIS INDENTURE, made the —— day of ——, BETWEEN A. B., of, &c. (*mortgagor*), of the one part, and C. D., of, &c. (*mortgagee*), of the other part: WHEREAS by an indenture dated the —— day of ——, and made between the said A. B. of the one part, and G. H., of, &c., of the other part, the hereditaments hereinafter described were conveyed by the said A. B. unto and to the use of the said G. H., in fee simple subject to a proviso therein contained for the redemption of the said hereditaments on payment by the said A. B. to the said G. H. of the sum of £500, with interest thereon: AND WHEREAS the said principal sum of £500 still remains owing to the said G. H. upon the said recited security, with interest thereon from the —— day of —— last: AND WHEREAS the said C. D. hath agreed to lend to the said A. B. the sum of £—— upon having the repayment thereof with interest secured to him in the manner hereinafter expressed: NOW THIS INDENTURE WITNESSETH, that in consideration, &c. (*the receipt, &c.*), the said A. B. (*Covenant to pay principal money and interest, suprà*, p. 515): AND THIS INDENTURE ALSO WITNESSETH, that for the consideration aforesaid the

Parties.

Recite first mortgage.

That principal sum remains due on first mortgage.

Agreement for loan.

Witnessing part.

(*a*) If the marriage was before the 1st of January, 1883, and the property was acquired after that date, so as to come within the Married Women's Property Act, 1882, the date of the marriage will be omitted in the description of the mortgagor, and recitals will be introduced showing the acquisition of the property since the 31st of December, 1882.

(*b*) If the property is leasehold, the lease and agreement for loan since the 31st of December, 1882, will be recited as in Precedent No. IX. *suprà*, p. 526.

OF EQUITY OF REDEMPTION.

said A. B., as beneficial owner, hereby conveys unto the said C. D.: ALL, &c. (*Parcels—Habendum to C. D., in fee*), subject to the hereinbefore recited indenture and the principal sum and interest thereby secured as aforesaid, and subject also to the following proviso, namely (*Proviso for redemption and declaration as to leasing power if desired, suprà*, pp. 515, 516.)

Mortgagor conveys parcels to mortgagee subject to first mortgage.

IN WITNESS, &c.

No. XXIV.

MORTGAGE WITH CONCURRENCE OF PRIOR MORTGAGEE.

MORTGAGE *with the* CONCURRENCE *of a* PRIOR MORTGAGEE *who* POSTPONES *his* MORTGAGE.

Parties.

THIS INDENTURE, made the —— day of ——, BETWEEN E. F., of (*prior mortgagee*), of the one part, A. B., of, &c. (*mortgagor*), of the second part, and C. D., of, &c. (*mortgagee*), of the third part (*Recite mortgage in fee from A. B., to E. F., to secure* £1000,—*that principal sum still remains due*): AND

Recite prior mortgage.

Agreement for mortgage.

WHEREAS the said A. B. hath applied to and requested the said C. D. to lend to him the sum of £2000, which the said C. D. hath agreed to do, upon having the repayment thereof with interest secured to him in the manner hereinafter expressed: AND WHEREAS the said E. F. hath agreed to postpone his aforesaid security to the security intended to be hereby made in the manner hereinafter expressed: NOW THIS INDENTURE WITNESSETH, that in consideration of the sum of £2000 paid to the said A. B. by the said C. D. on or before the execution of these presents (*the receipt, &c.*), the said A. B., &c. (*Covenant to pay principal money and interest, suprà*, p. 515): AND THIS INDENTURE ALSO WITNESSETH, that for the consideration aforesaid the said E. F., as mortgagee, at the request of the said A. B., hereby conveys, and the said A. B., as beneficial owner, hereby conveys and confirms unto the said C. D., ALL, &c. (*parcels, &c.*): To HOLD the same unto and to the use of the said C. D. in

Agreement by prior mortgagee to postpone his security.

Witnessing part.

Prior mortgagee and mortgagor convey to mortgagee.

fee simple: PROVIDED ALWAYS, that if the said sum of £2000, with interest thereon, shall be paid on the —— day of —— next according to the foregoing covenant in that behalf, then and in such case the said hereditaments and premises shall, at the cost of the said A. B., his heirs or assigns, be reconveyed to the use of the said E. F. in fee simple, subject to such right or equity of redemption as shall be subsisting therein under or by virtue of the hereinbefore recited indenture: AND IT IS HEREBY AGREED AND DECLARED between and by the said A. B. and E. F. that, subject to the security hereby made, the hereinbefore recited indenture of mortgage, and all powers and provisions therein contained, shall remain in full force (*Declaration as to leasing power, if desired, suprà*, p. 516, *adding after the words*, "C. D., his executors, administrators, or assigns," *the words*, "or the said E. F., his executors, administrators, or assigns"): AND the said E. F. hereby acknowledges the right of the said C. D. to production of the hereinbefore recited indenture of mortgage and to delivery of copies thereof: AND the said C. D. hereby acknowledges the right of the said E. F. to production of these presents and of the documents of title relating to the premises specified in the schedule hereto, which documents have been delivered to him the said C. D., as he doth hereby declare (*a*).

IN WITNESS, &c.

MORTGAGE WITH CONCURRENCE OF PRIOR MORTGAGEE.

Proviso for redemption.

Declaration that, subject to this security, former mortgage shall remain in full force.

Acknowledgment as to production of deeds and delivery of copies thereof.

THE SCHEDULE ABOVE REFERRED TO.

(*a*) It is supposed in this case that E. F. retains his mortgage deed, but that all the other title deeds are handed over to C. D.

No. XXV.

MORTGAGE *of* LEASEHOLDS *by* EXECUTORS.

MORTGAGE BY EXECUTORS OF LEASEHOLDS.

THIS INDENTURE, made, &c., BETWEEN A. B., of, &c., and C. D., of, &c. (*mortgagors*), of the one part, and E. F., of, &c. (*mortgagee*), of the other part (*Recite lease from G. H. to X. Y.—will of X. Y. appointing A. B. and C. D. executors;—death of X. Y. and probate of his will*): AND WHEREAS the said A. B. and C. D., as such executors as aforesaid, having occasion for the sum of £200, have requested the said E. F. to lend to them such sum, which he the said E. F. has agreed to do, on having the repayment thereof, with interest, secured to him in the manner hereinafter expressed: NOW THIS INDENTURE WITNESSETH, that in consideration of the sum of £200 paid to the said A. B. and C. D. by the said E. F. on or before the execution of these presents (the receipt whereof the said A. B. and C. D. hereby acknowledge): They the said A. B. and C. D., as personal representatives of the said X. Y. deceased, hereby demise unto the said E. F. ALL the hereditaments and premises comprised in and demised by the hereinbefore recited indenture of lease: TO HOLD the same unto the said E. F., for all the residue now unexpired of the said term of —— years granted therein by the said indenture of lease as aforesaid (except the last day of the said term): PROVIDED ALWAYS, that if any person or persons interested in the said premises under the said will of the said X. Y., shall, on the —— day of —— next, pay to the said E. F. the sum of £200, with interest thereon at the rate of £—— per cent. per annum, computed from the date of these presents, then and in such case the demise hereby made shall be void: AND IT IS HEREBY DECLARED (but not so as to create any personal liability on the part of the said A. B. and C. D., or either of them), that if the said sum of £—— shall not be paid on the said —— day of —— next, interest thereon after the rate aforesaid shall continue to be paid to the said E. F., by equal half-yearly payments, on the —— day of —— and the —— day of —— in every year, until the said sum of £—— shall be fully paid: AND FURTHER, that the buildings on

Parties.

Agreement for loan.

Witnessing part.

Consideration.

Executors demise leaseholds

to mortgagee for residue of term, except last day.

Proviso for redemption.

Declaration that interest shall be paid half-yearly.

And that

the said premises hereby conveyed shall, at all times during the continuance of this security, be kept insured against loss or damage by fire in the sum of £—— at least: AND IT IS HEREBY ALSO DECLARED, that after any sale made under the statutory power in that behalf, the said A. B. and C. D., or other the person or persons in whom the said term of —— years granted by the said indenture of lease shall for the time being be vested, shall stand possessed of the premises sold for the last day of the said term, In trust for the purchaser, and to be assigned and disposed of as he may direct. (*Declaration as to leasing power, if desired, suprà*, p. 516.)

MORTGAGE BY EXECUTORS OF LEASEHOLDS.

buildings shall be insured.

After sale, last day of term to be held in trust for purchaser.

IN WITNESS, &c.

No. XXVI.

MORTGAGE *of a* POLICY *of* ASSURANCE *effected in the* NAME *of the* MORTGAGOR.

POLICY OF ASSURANCE.

THIS INDENTURE, made the —— day of ——, BETWEEN A. B., of, &c. (*mortgagor*), of the one part, and C. D., of, &c. (*mortgagee*), of the other part: WITNESSETH, that in consideration, &c. (*Covenant to pay principal and interest, suprà*, p. 515): AND THIS INDENTURE ALSO WITNESSETH, that for the consideration aforesaid, the said A. B., as beneficial owner, hereby assigns unto the said C. D. ALL THAT policy of assurance, under the hands of three of the directors of the —— Assurance Society, dated the —— day of ——, and numbered ——, whereby the sum of £—— is assured to be paid to the executors, administrators, or assigns of the said A. B. within three calendar months after proof of his death, subject to the annual premium of £——: TO HOLD the same unto the said C. D.: PROVIDED ALWAYS, that if the said sum of £——, with interest thereon, shall be paid on the —— day of —— next, according to the foregoing covenant in that behalf, the said policy shall be reassigned unto the said A. B. at his cost (*a*): AND the said A. B. hereby covenants with the said

Parties.

Mortgagor assigns policy

to mortgagee.

Proviso for redemption.

Covenant by

(*a*) It is provided by the Conveyancing Act, 1881, sect. 22 (1), that the receipt in writing of a mortgagee shall be a sufficient dis-

POLICY OF ASSURANCE.

mortgagor not to vitiate policy,

C. D. that he the said A. B. will not at any time hereafter do any act or commit any default whereby the said policy of assurance may be rendered void or voidable (*b*), and will, in case at any time during the continuance of this security the said policy, or any new policy to be effected as hereinafter mentioned, shall by any means become void, forthwith at his own cost effect a new policy on his life in lieu of such void policy, in the name or names of the said C. D., his executors, administrators, or assigns, in some office to be approved of by him or them, in the sum of £—— at least, and

and to pay premiums,

will duly and regularly pay the premiums and other sums of money (if any) which shall from time to time become payable for keeping on foot the said policy hereby assigned, and every or any

and to deliver receipts.

such new policy as aforesaid, and will deliver to the said C. D., his executors, administrators, or assigns, the receipt for every such premium within seven days after the same shall become

If mortgagor makes default mortgagee may keep up policy.

due: And in case default shall be made by the said A. B. in keeping on foot the said policy hereby assigned, or in effecting or keeping on foot any such new policy as aforesaid, then and in every such case it shall be lawful for the said C. D., his executors, administrators, or assigns, to keep on foot the said policy hereby assigned, or to effect or keep on foot any such new policy as aforesaid (as the case may require) if he or they shall think fit so to do, and all moneys paid by him or them for that purpose, with interest for the same after the rate of £5 per cent. per annum, computed from the time or respective times of paying or ad-

Security to include moneys ad-

vancing the same, shall be repaid to him or them by the said A. B. on demand, and shall in the meantime be charged on the

charge for any money arising under the power of sale conferred by the Act, or for any money or securities comprised in his mortgage, or arising thereunder; and a person paying or transferring the same to the mortgagee shall not be concerned to inquire whether any money remains due under the mortgage: And (2) that money received by a mortgagee under his mortgage or from the proceeds of securities comprised in his mortgage shall be applied in like manner as in the Act directed respecting money received by him arising from a sale under the power of sale conferred by the Act; but with this variation, that the costs, charges, and expenses payable shall include the costs, charges, and expenses properly incurred of recovering and receiving the money or securities, and of conversion of securities into money, instead of those incident to sale.

(*b*) On the mortgage of a policy of assurance, the mortgagor should covenant that he will do no act whereby the policy may be rendered void, as well as that he will do all acts necessary for keeping it on foot. Dunnay *v.* Borrodaile, 5 C. B. 380.

policy of assurance and premises for the time being subject to this security, in addition to the said principal sum of £—— hereby originally secured, and the interest thereof (*d*) : AND IT IS HEREBY DECLARED that under the statutory power of sale the said policy hereby assigned, or any substituted policy, may be sold either to the assurance society by which the same has been or shall be granted, or to any other person or persons, company or companies : [AND IT IS HEREBY ALSO DECLARED that the statutory power of sale may be exercised at any time after the said —— day of —— next, without its being necessary to give to the said A. B. any notice requiring payment of the mortgage money in like manner as if section 20 of the Conveyancing and Law of Property Act, 1881, had been omitted from the said Act (*e*).]

POLICY OF ASSURANCE.

Vanced by mortgagee for insurance.

Policy may be sold under power to assurance office or otherwise.

Statutory power of sale may be exercised without notice.

IN WITNESS, &c.

No. XXVII.

MORTGAGE *of a* POLICY *of* ASSURANCE *effected in the* NAME *of the* MORTGAGEE. TWO SURETIES *join in the* SECURITY (*a*).

POLICY OF ASSURANCE WHERE SURETIES JOIN.

THIS INDENTURE, made, &c., BETWEEN A. B., of, &c. (*mortgagor*), of the first part, C. D., of, &c., and E. F., of, &c. (*sureties*), of the second part, and G. H., of, &c. (*mortgagee*), of

Parties.

(*d*) On the mortgage of a life policy, the deed should always contain a provision enabling the mortgagee to keep up the policy in case of the mortgagor's default, and making the sums which he should advance for the purpose, with interest thereon, an additional charge on the property. It is however, settled, that even in the absence of any such provision, a mortgagee is entitled to charge the property with any sums he may advance for keeping up the policy, and with interest thereon at four per cent. Bellamy *v.* Brickenden, 2 J. & H. 137.

Mortgagee should be authorised to keep up policy.

(*e*) This clause will be inserted only where thought necessary.

(*a*) Where a person joins as surety it is necessary that he should be made acquainted with all the circumstances and facts which bear upon or can affect his position, for if he is kept in ignorance of anything which might have influenced him in undertaking the obligation, the creditor will have no remedy against him ; and in order to preserve his obligation care must be taken in all subsequent transactions between the principal debtor and the creditor that no arrangement is made between them either as to the payment of the debt or the securities which can prejudicially affect the surety's

Liability of surety.

POLICY OF ASSURANCE WHERE SURETIES JOIN.

the third part: WHEREAS the said A. B., and also the said C. D. and E. F., have requested the said G. H. to lend to the said A. B. the sum of £——, which the said G. H. has agreed to do upon having the repayment thereof with interest secured to him in the manner hereinafter expressed: AND WHEREAS it was part of the security agreed upon as aforesaid, that the said A. B. should effect an assurance on his life in the name of the said G. H. in the sum of £——, and accordingly by a policy of assurance under the hands of three of the directors of the —— Assurance Company, dated ——, and numbered ——, the sum of £—— is assured to be paid to the said G. H., his executors, administrators, or assigns, within three calendar months after proof of the decease of the said A. B., subject to the payment of an annual premium of £——: NOW THIS

Recite agreement for loan.

Policy of assurance on life of mortgagor effected in the name of the mortgagee.

Witnessing part.

position. Thus, if further time is given by the creditor to the principal debtor for the payment of the debt without the surety's consent, and without reserving a right to proceed against the surety (Samuell *v.* Howarth, 3 Mer. 272; Oriental Financial Corporation *v.* Overend & Co., L. R. 7 C. A. 142); or if the creditor without the consent of the surety compounds with the principal debtor or releases him from payment of the debt (Webb *v.* Hewitt, 3 K. & J. 438; Nicholson *v.* Revill, 4 Ad. & El. 675; Taylor *v.* Manners, L. R. 1 C. A. 48), the surety will be discharged (see Tudor's L. C. in Equity, p. 980, 4th ed.); but it seems that a covenant not to sue the principal debtor subject to a proviso that the creditor should not be prevented from suing any other person than the principal debtor who might be liable to pay the money, does not discharge the surety (Price *v.* Barker, 24 L. J. N. S. (Q. B.) p. 130; Green *v.* Winn, L. R. 4 C. A. 204). The surety will not, however, be released from his obligations if his remedies are not affected by the arrangement between the creditor and the principal debtor (Hulme *v.* Coles, 2 Sim. 12), or if further time is given with the consent of the surety, or if the right of the principal debtor to proceed against the surety is clearly reserved (Boultbee *v.* Stubbs, 18 Ves. 32; Webb *v.* Hewitt, *ubi suprà*), or by the creditor not taking proceedings against the principal debtor for the payment of the debt, or by his taking an additional security or afterwards releasing such further security (Newton *v.* Chorlton, 10 Hare, 646); but the surety would be released if the creditor were to take from the debtor a security in substitution for all or any of the original securities (Tud. L. C. in Equity, 1091, 4th ed.). It is also to be observed that if there are two sureties and the creditor releases one, such release operates as a release of the other (Nicholson *v.* Revill, 4 A. & E. 675; Evans *v.* Bremridge, 2 K. & J. 183). So if the mortgage deed is drawn in such a manner that several sureties shall enter into joint and several covenants, the signature of all is necessary in order to affect all or any of them (Evans *v.* Bremridge, 2 K. & J. 174). If a surety pays the debt of the principal debtor he is entitled to stand in the place of the creditor as to all his remedies and the benefit of all his securities (whether they be land, specialty, or otherwise) for the payment of his debt (Newton *v.* Chorlton, *ubi suprà*,—Mercantile Law Amendment Act, 1856, 19 & 20 Vict. c. 97, s. 5). Under a joint and several suretyship the death of one of the sureties does not by itself determine the liability of the surviving co-surety (Beckett & Co. *v.* Addyman, 9 Q. B. D. 783).

POLICY OF ASSURANCE WHERE SURETIES JOIN.

INDENTURE WITNESSETH, that in consideration, &c. (*the receipt, &c.*), THE SAID A. B., C. D. and E. F. hereby jointly and severally covenant with the said G. H. to pay to him on the —— day of —— next, the sum of £——, with interest thereon in the meantime after the rate of £—— per cent. per annum, computed from the date of these presents: AND ALSO so long after that day as any principal money remains due on this mortgage, to pay to him interest thereon after the rate aforesaid, by equal half-yearly payments on the —— day of ——, and the —— day of ——: AND ALSO to pay all premiums and other sums of money which shall from time to time become payable for keeping on foot the hereinbefore recited policy of assurance, and if the said policy shall become void to effect a new policy on the life of the said A. B. in lieu of such void policy in the name or names of the said C. D., his executors, administrators, or assigns, in the sum of £—— at least, and to pay all expenses of and incidental to the effecting of any such new policy, and all premiums and other sums of money payable for keeping on foot the same, and also to deliver to the said G. H., his executors, administrators, or assigns, the receipt for every premium payable as aforesaid within seven days after the same premium shall become due: AND THAT if default shall be made by the said covenanting persons in keeping on foot the hereinbefore recited policy, or in effecting and keeping on foot any such new policy as aforesaid, then and in every such case it shall be lawful for the said G. H., his executors, administrators, or assigns, to keep on foot the hereinbefore recited policy, or to effect and keep on foot any such new policy as aforesaid (as the case may require), if he or they shall think fit so to do, and in that case all moneys expended by him or them for that purpose, with interest for the same after the rate of £5 per cent. per annum, computed from the time or respective times of paying or advancing the same, shall be repaid to him or them by the said covenanting persons, or some or one of them, on demand: AND IT IS HEREBY AGREED and declared that the hereinbefore recited policy of assurance and every new policy to be effected as aforesaid shall stand charged with the payment to the said G. H., his executors, administrators, or assigns, of the said principal sum of £—— and the interest thereof according to the foregoing covenant in that behalf, and also with the repayment

Joint and several covenants by mortgagor and his sureties to pay principal sum and interest.

To pay premiums,

and deliver receipts to mortgagee.

Power to mortgagee to keep on foot policy and effect new policy in case of default by mortgagor.

Sums expended by mortgagee in keeping on foot or effecting policies, with interest to be repaid.

Declaration that policy shall be charged with principal money and interest and sums expended

POLICY OF ASSURANCE WHERE SURETIES JOIN.

of all moneys which shall be expended by him or them in or about the keeping on foot or effecting any policy as aforesaid, and the interest which shall become due in respect thereof, and subject thereto shall be held in trust for the said A. B.: AND IT IS HEREBY DECLARED, that, &c. (*Policy may be sold under power to assurance society or otherwise. Statutory power of sale may be exercised without notice as in last Precedent, suprà*, p. 551): PROVIDED ALWAYS, and it is hereby agreed and declared, that any neglect or forbearance of the said G. H., his executors, administrators, or assigns, in endeavouring to obtain payment of the principal moneys and interest intended to be hereby secured, or in putting in force any of his or their remedies for the same, and any time which may be given by him or them to the said A. B., or to either of them the said C. D. and E. F., shall not in any way prejudice or affect the joint and several covenants hereinbefore contained, or the continuing liability of the covenanting parties or any of them by virtue thereof, any rule of law or equity to the contrary notwithstanding.

Proviso that forbearance by mortgagee shall not put an end to the liability of sureties.

IN WITNESS, &c.

No. XXVIII.

LIFE INTEREST IN PERSONALTY AND POLICY.

MORTGAGE *of a* LIFE INTEREST IN PERSONALTY *and a* POLICY *of* ASSURANCE.

Parties.

THIS INDENTURE, made the —— day of ——, BETWEEN A. B., of, &c. (*mortgagor*), of the one part, and C. D., of, &c. (*mortgagee*), of the other part: WHEREAS under or by virtue of an indenture dated, &c., and made, &c., being the settlement made in contemplation of the marriage then intended, and shortly afterwards solemnized between the said A. B. and E. now his wife (then E. F.), the said A. B. is entitled to receive during his life the dividends, interest, and annual produce to arise from the trust funds settled by the said indenture, which

Recite settlement under which mortgagor is entitled to a life interest in trust funds.

trust funds now consist of the sum of £—— £3 per Cent. Consolidated Annuities, standing in the names of M. N. and O. P. (the trustees of the said indenture) in the books of the Governor and Company of the Bank of England, and the sum of £—— invested in the names of the same trustees on mortgage of real estates situate in the county of ——: AND WHEREAS (*Recite policy of assurance, suprà*, p. 426—*agreement for mortgage, suprà*, p. 526): NOW THIS INDENTURE WITNESSETH, that in consideration, &c., the said A. B., &c. (*Covenants to pay principal money and interest, suprà*, p. 515): AND THIS INDENTURE ALSO WITNESSETH that, for the consideration aforesaid, the said A. B., as beneficial owner, hereby assigns unto the said C. D., ALL the dividends, interest, and annual produce to arise and become payable during the life of the said A. B., from the said sum of £—— £3 per Cent. Consolidated Annuities, and the said sum of £—— invested on mortgage as aforesaid, or other the trust funds for the time being subject to the said indenture of settlement: AND ALSO the hereinbefore recited policy of assurance, and the moneys assured by and to become payable under the same: TO HOLD the same unto the said C. D.: PROVIDED ALWAYS, that if the said sum of £——, with interest thereon, shall be paid on the —— day of —— next, according to the foregoing covenant in that behalf, then and in such case the said premises shall be reassigned unto the said A. B., at his expense, or as he shall direct: AND THE SAID A. B. hereby covenants, &c. (*Covenants as to policy as in Precedent No. XXVI.*, p. 551, *adding in the last clause the words* "dividends, interest, and annual produce" *before* "policy of assurance and premises." *Policy may be sold to office or otherwise, and if desired statutory power of sale may be exercised without notice, suprà*, p. 551.)

IN WITNESS, &c.

LIFE INTEREST IN PERSONALTY AND POLICY.

Policy of assurance on life of mortgagor. Witnessing part.

Mortgagor assigns life interest in trust funds and policy to mortgagee.

Proviso for redemption.

No. XXIX.

LIFE ESTATE IN LANDS AND POLICIES.

MORTGAGE *of a* LIFE ESTATE *in* LANDS *and of* POLICIES *of* ASSURANCE *to* TWO PERSONS *subject to a* PRIOR MORTGAGE.

Parties.

THIS INDENTURE, made the —— day of ——, BETWEEN A. B., of, &c. (*mortgagor*), of the one part, and C. D., of, &c., and E. F., of, &c. (*mortgagees*), of the other part: WHEREAS under the will of ——, dated, &c., the said A. B. is seised for an estate during his life without impeachment of waste of the hereditaments intended to be hereby demised, and the said A. B. is also possessed of the several policies of assurance on his life intended to be hereby assigned, subject as to the said hereditaments and policies to an indenture dated the —— day of ——, and made between the said A. B. of the one part, and G. H., of, &c., of the other part, whereby the said hereditaments were demised by the said A. B. unto the said G. H., for the term of ninety-nine years, without impeachment of waste, if he the said A. B. should so long live, and the said policies were assigned by the said A. B. unto the said G. H., by way of mortgage for securing the payment of the principal sum of £——, with interest for the same, and which principal sum still remains due and owing, but all interest for the same has been duly paid up to the —— day of —— last (*Agreement for loan, suprà*, p. 515): NOW THIS INDENTURE WITNESSETH, that in consideration, &c. (*the receipt, &c.*), the said A. B., &c. (*covenant to pay principal money and interest, suprà, p.* 515): AND THIS INDENTURE FURTHER WITNESSETH, that for the consideration aforesaid, the said A. B., as beneficial owner, hereby demises unto the said C. D. and E. F. ALL the messuages, lands, tenements, and hereditaments, situate in the parish of ——, in the county of ——, described in the first schedule hereto: AND ALL other (if any) the messuages, lands, tenements, and hereditaments devised by the said will of the said —— TO HOLD the same unto the said C. D. and E. F. from the date of these

Recite that mortgagor is entitled to life estate in lands and to policies of assurance on his life, subject to prior mortgage.

Mortgagor demises lands

presents, for the term of one hundred years thence next ensuing, if the said A. B. shall so long live, subject to the said indenture of the —— day of —— and the said principal sum of £ —— due and owing by virtue thereof as aforesaid and the interest for the same, and subject also to the proviso for redemption hereinafter contained: AND THIS INDENTURE ALSO WITNESSETH, that for the consideration aforesaid, the said A. B., as beneficial owner, hereby assigns unto the said C. D. and E. F., THE SEVERAL policies of assurance on the life of the said A. B. described in the second schedule hereto, and the several moneys assured by and to become payable under or by virtue of the said policies respectively: TO HOLD the same unto the said C. D. and E. F. subject to the said indenture of the —— day of —— and the said principal sum of £—— due and owing by virtue thereof and the interest for the same, and subject also to the proviso for redemption hereinafter contained: PROVIDED ALWAYS, that if the said sum of £—— with interest thereon shall be paid on the —— day of —— next, according to the foregoing covenant in that behalf, then and in such case the said hereditaments, policies, moneys, and premises hereby demised and assigned respectively, shall be respectively surrendered and reassigned unto the said A. B. at his expense: AND the said A. B. hereby covenants with the said C. D. and E. F. that he the said A. B. will not do any act, or commit any default, whereby the said policies of assurance hereby assigned, or any of them, may be rendered void or voidable: AND IN CASE the said policies or any policy or policies to be effected as hereinafter mentioned, shall by any means become void, then will forthwith, at his own cost, effect a new policy or new policies on his life, in lieu of such void policy or policies, in the names of the said C. D. and E. F., their executors, administrators, or assigns, in some office to be approved by them, in a sum or sums not less in amount than the sum or sums assured by the policy or policies which shall have become void as aforesaid (including any bonus or bonuses which may have been declared thereon) and will duly and regularly pay the premiums and other sums of money (if any) which shall from time to time become payable for keeping on foot the said policies hereby assigned, or any new

LIFE ESTATE IN LANDS AND POLICIES.

to mortgagees for term of 100 years if mortgagor shall so long live subject to prior mortgage.

Mortgagor assigns policies.

To mortgagees.

Proviso for redemption.

Covenant by mortgagor not to vitiate policies,

and to renew same if they become void,

and to pay premiums,

LIFE ESTATE IN LANDS AND POLICIES.

policy or policies to be effected as aforesaid, and deliver to the said C. D. and E. F., their executors, administrators, or assigns, the receipt for every such premium within seven days after the same shall become due: AND if default shall be made by the said A. B. in keeping on foot the said policies hereby assigned, or in effecting or keeping on foot any such new policy or policies, then and in such case the said C. D. and E. F., their executors, administrators, or assigns, may keep on foot the said policies, or effect and keep on foot such new policy or policies as aforesaid, as the case may require, if they shall think fit so to do: AND IN THAT CASE all moneys expended by them for that purpose, with interest thereon after the rate of £5 per cent. per annum computed from the time or respective times of paying or advancing the same, shall be repaid by the said A. B. on demand and shall in the meantime be charged on the hereditaments and policies of assurance for the time being subject to this security, in addition to the said principal sum of £—— and the interest thereof. (*Declaration as to leasing power if desired, suprà*, p. 516.)

and to deliver receipts;

and in case of mortgagor's default, mortgagee may keep up assurance,

and that mortgagor will pay moneys advanced by mortgagees for assurance.

Security to include moneys advanced by mortgagee for assurance.

IN WITNESS, &c.

THE FIRST SCHEDULE ABOVE REFERRED TO.

THE SECOND SCHEDULE ABOVE REFERRED TO.

No. XXX.

TO SECURE RE-TRANSFER OF STOCK.

MORTGAGE *of* FREEHOLDS *to secure the re-transfer of* STOCK, *and the Payment in the meantime of such Sums as may be equal to the* DIVIDENDS *thereof* (*a*).

Parties.

THIS INDENTURE, made the —— day of ——, BETWEEN A. B., of, &c. (*mortgagor*), of the one part, and C. D., of, &c.

(*a*) The provisions relating to mortgages in the Conveyancing Act, 1881, including the statutory power of sale, apply to a mortgage to secure stock, stock being included in the expression "money's worth." See sect. 2, sub-sect. 6.

(*mortgagee*), of the other part: WHEREAS the said C. D. hath agreed to lend to the said A. B. the sum of £—— (being the proceeds of the sale of the sum of £—— £3 per Cent. Consolidated Annuities, recently standing in the name of the said C. D., in the books of the Governor and Company of the Bank of England), upon having the transfer of a like sum of £—— £3 per Cent. Consolidated Annuities into the name of the said C. D., and the payment in the meantime of an annual sum in lieu of the dividends of the said stock secured to the said C. D. in manner hereinafter mentioned: NOW THIS INDENTURE WITNESSETH, that in consideration of the sum of £—— (being the proceeds of the sale of the said sum of £—— £3 per Cent. Consolidated Annuities) paid to the said A. B. by the said C. D. on or before the execution of these presents (*the receipt, &c.*) the said A. B. hereby covenants with the said C. D. to transfer, or cause to be transferred, into the name or names of the said C. D., his executors, administrators, or assigns, in the books of the Governor and Company of the Bank of England, on the —— day of —— next, the sum of £—— £3 per Cent. Consolidated Annuities, and, in the meantime, until the said Annuities shall be so transferred, to pay unto the said C. D., his executors, administrators, or assigns, such sums of money as shall be equal in amount to the dividends which the said C. D., his executors, administrators, and assigns, would have been entitled to receive on account of the said annuities, if the same had continued standing in the name of the said C. D., such payments to be made at such times as the said dividends would have become payable: AND THIS INDENTURE ALSO WITNESSETH, that for the consideration aforesaid, the said A. B., as beneficial owner, &c. (*Conveyance to mortgagee in fee*): PROVIDED ALWAYS, that if the covenant of the said A. B. hereinbefore contained shall be duly performed, the said premises shall, at the request and cost of the said A. B., his heirs or assigns, be re-conveyed to him or them. (*Declaration as to leasing power if desired, suprà*, p. 516.)

IN WITNESS, &c.

TO SECURE RE-TRANSFER OF STOCK.

Agreement for advance of proceeds of consols.

Covenant by mortgagor to transfer stock, and to pay in the meantime sums equal to dividends.

No. XXXI.

TO SECURE RE-TRANSFER OF STOCK AND INTEREST ON PROCEEDS.

MORTGAGE *to secure the* RE-TRANSFER *of* STOCK *lent, and* PAYMENT *of* INTEREST *on* PROCEEDS *in the* MEANTIME.

Parties.

THIS INDENTURE, made the —— day of ——, BETWEEN A. B., of, &c. (*mortgagor*), of the one part, and C. D., of, &c. (*mortgagee*), of the other part: WHEREAS the said C. D. hath

Agreement for advance.

agreed to sell the sum of £—— £3 per Cent. Consolidated Annuities, belonging to him, and to pay the proceeds of such sale to the said A. B. upon having a transfer of a like sum of £—— £3 per Cent. Consolidated Annuities, and the payment in the meantime of interest on the proceeds of the said sale after the rate of £—— per cent. per annum, secured to the said C. D. in manner hereinafter mentioned: NOW THIS INDENTURE WITNESSETH, that in consideration, &c. (*as in last Precedent*):

Covenant to transfer stock.

THE SAID A. B. hereby covenants with the said C. D. to transfer of cause to be transferred into the name or names of the said C. D., his executors, administrators, or assigns, in the books of the Governor and Company of the Bank of England, on the —— day of —— next, the sum of £—— £3 per Cent. Consolidated

and to pay interest on proceeds.

Annuities, and at the same time to pay to him or them interest for the said sum of £—— (*proceeds of sale of stock*), after the rate of £—— per cent. per annum, computed from the date of these presents: And if the said sum of £—— £3 per Cent. Consolidated Annuities shall not be transferred as aforesaid on the said —— day of —— next, then to pay to him or them interest after the rate aforesaid, for the said sum of £—— (*proceeds of sale*), or for such sum as shall bear the same proportion to the said sum of £—— (*proceeds of sale*) as the £3 per Cent. Consolidated Annuities for the time being owing on the security of these presents, shall bear to the said sum of £—— like annuities, by equal half-yearly payments on the —— day of ——, and the —— day of —— in every year until the whole of the last mentioned sum of £3 per Cent. Consolidated Annui-

ties shall have been transferred as aforesaid: AND THIS INDENTURE ALSO WITNESSETH, &c. (*as in last Precedent to the end*).

TO SECURE RE-TRANSFER OF STOCK AND INTEREST ON PROCEEDS.

IN WITNESS, &c.

No. XXXII.

CONVEYANCE *of* FREEHOLDS *where part of the* PURCHASE-MONEY *is retained by the* PURCHASER, *and secured by a* MORTGAGE *for a* TERM *of* YEARS *to the* VENDOR (*a*).

CONVEYANCE WHERE PART OF PURCHASE-MONEY IS SECURED BY MORTGAGE.

THIS INDENTURE, made the —— day of ——, BETWEEN A. B. of, &c. (*vendor*), of the one part, and C. D. of, &c. (*purchaser*), of the other part: WHEREAS the said A. B. hath agreed to sell to the said C. D. the fee simple of the hereditaments hereinafter described, at the price of £500: AND WHEREAS upon the treaty for the said purchase it was agreed that the sum of £200, part of the said purchase-money, should remain in the hands of the said C. D., and that the payment thereof with interest should be secured in the manner hereinafter expressed: NOW THIS INDENTURE WITNESSETH, that in consideration of the sum of £300, part of the said purchase-money of £500, to the said A. B. paid by the said C. D. on or before the execution of these presents (*the receipt, &c.*), and also in consideration of the sum of £200, being the remainder of the said purchase-money, secured to be paid to the said A. B. as hereinafter mentioned, the said

Parties.

Recite contract for sale.

Part of purchase-money to remain due on security of freeholds

(*a*) It is generally more convenient to have two deeds to carry out an arrangement for retaining a part of the purchase-money on mortgage of the purchased property, viz., (1) the conveyance to the purchaser in the usual form; and (2) a mortgage in the usual form from the purchaser to the vendor, executed immediately after the deed of conveyance. Sometimes, however, it is wished to effect the whole arrangement in one deed, and in that case the above Precedent may be adopted. It will be observed that the mortgage is for a term of years, and contains no power of sale, it being assumed that the mortgage is only for a temporary purpose, and is likely to be shortly paid off.

Best arrangement where part of purchase-money is retained on mortgage.

CONVEYANCE WHERE PART OF PURCHASE-MONEY IS SECURED BY MORTGAGE.

A. B., as beneficial owner, hereby conveys unto the said C. D. ALL, &c. (*parcels*): To HOLD the same unto the said C. D. in fee simple: To THE USE of the said A. B., for the term of 500 years, computed from the day of the date of these presents, subject nevertheless to the proviso for the cesser of the said term hereinafter contained, and from and after the determination of the said term, and in the meantime subject thereto, To THE USE of the said C. D. in fee simple: PROVIDED ALWAYS, that if the said C. D. shall on the —— day of —— next, pay to the said A. B. the sum of £200, with interest for the same after the rate of £—— per cent. per annum, computed from the date of these presents, then and in such case and immediately after such payment the said term of 500 years shall cease and determine. (*Covenants by C. D. for payment of principal and interest, suprà*, p. 515.)

Conveyance by vendor of parcels.

To hold to purchaser, to use of vendor, to secure unpaid purchase-money, and then to use of purchaser in fee.

IN WITNESS, &c.

No. XXXIII.

MORTGAGE TO SECURE PART OF PURCHASE-MONEY.

CONVEYANCE *of* FREEHOLDS, *by direction of* PURCHASER, *to a* MORTGAGEE *to secure part of the* PURCHASE-MONEY (*a*).

Parties.

THIS INDENTURE, made the —— day of ——, BETWEEN A. B. of, &c. (*vendor*), of the first part, C. D. of, &c. (*purchaser*), of the second part, and E. F. of, &c. (*mortgagee*), of the third part: WHEREAS the said A. B. hath agreed to sell to the said C. D. the fee simple of the hereditaments hereinafter described at the price of £1000: AND WHEREAS the said C. D. having occasion for the sum of £600 in order to enable him to complete the said purchase, hath requested the said E. F. to advance the said sum for that purpose, which he hath agreed to do on having the repayment thereof, with interest, secured in manner hereinafter mentioned: NOW THIS INDENTURE WITNESSETH, that in consideration of the sum of £400

Agreement for sale.

Agreement to lend part of purchase-money.

(*a*) See the note to the last Precedent.

to the said A. B. paid by the said C. D. on or before the execution of these presents (the receipt whereof the said A. B. hereby acknowledges), and in consideration of the sum of £600 to the said A. B. at the same time paid by the said E. F., by the direction of the said C. D. (the receipt whereof the said A. B. hereby acknowledges), the said A. B., as beneficial owner, at the request of the said C. D., hereby conveys unto the said E. F., ALL, &c. (*parcels*): To HOLD the same unto and to the use of the said E. F. in fee simple: PROVIDED ALWAYS, that if the said C. D. shall on the —— day of —— next pay to the said E. F. the sum of £600, with interest for the same after the rate of £—— per cent. per annum, computed from the date of these presents, then and in such case the said hereditaments and premises shall, at the request and cost of the said C. D., his heirs or assigns, be conveyed to him or them. (*Covenant by C. D. with E. F. to pay principal and interest, suprà*, p. 515. *Declaration as to leasing power, if desired, suprà*, p. 516.)

MORTGAGE TO SECURE PART OF PURCHASE-MONEY.

Considera-tion.

Vendor, by direction of purchaser, conveys to mortgagee.

Proviso for redemption.

IN WITNESS, &c.

No. XXXIV.

MORTGAGE *of a* MORTGAGE DEBT *and the* SECURITY.

MORTGAGE DEBT AND SECURITIES.

THIS INDENTURE, made the —— day of ——, BETWEEN A. B. of, &c. (*mortgagor*), of the one part, and C. D. of, &c. (*mortgagee*), of the other part: WHEREAS by an indenture dated, &c., and made between X. Y. of, &c., of the one part, and the said A. B. of the other part, ALL, &c. (*parcels*), were conveyed by the said X. Y. unto and to the use of the said A. B., in fee simple subject to a proviso therein contained for the redemption of the said hereditaments on payment by the said X. Y. to the said A. B. of the sum of £1000, with interest for the same after the rate of £—— per cent. per annum, on the —— day of —— then next: AND WHEREAS the said principal sum of £1000 still remains owing to the said A. B. upon the security of the hereinbefore recited indenture, with an arrear of interest thereon (*Recite agreement for loan*): NOW THIS

Parties.

Recite mortgage.

That principal sum remains due.

Witnessing part.

MORTGAGE DEBT AND SECURITIES.

INDENTURE WITNESSETH, that in consideration, &c. (*the receipt, &c.*), THE said A. B. hereby covenants, &c. (*covenants to pay principal money and interest, suprà*, p. 515): AND THIS INDENTURE FURTHER WITNESSETH, that for the consideration aforesaid, the said A. B., as beneficial owner, hereby assigns unto the said C. D., THE SAID principal sum of £1000 now due and owing to the said A. B. upon the security of the hereinbefore recited indenture as aforesaid, and all interest now due and henceforth to become due for the same, and the benefit of all securities for the same (including the statutory power of sale), TOGETHER WITH full power to demand, sue for, recover, and receive, and give effectual receipts and discharges for the said principal sum and interest, in the name of the said A. B, or otherwise (*a*), TO HOLD the same unto the said C. D., subject to the proviso for redemption hereinafter contained: AND THIS INDENTURE ALSO WITNESSETH, that for the consideration aforesaid, THE said A. B. as beneficial owner hereby conveys unto the said C. D., ALL the hereditaments and premises comprised in and conveyed by the hereinbefore recited indenture: TO HOLD the same unto and to the use of the said C. D. in fee simple, subject to such right or equity of redemption as the same are now subject to by virtue of the hereinbefore recited indenture, and also subject to the proviso for redemption hereinafter contained: PROVIDED ALWAYS, and it is hereby agreed and declared, that if the said sum of £——, with interest thereon, shall be paid on the —— day of —— next, according to the foregoing covenant in that behalf, then and in such case the said principal sum and interest, hereditaments and premises hereinbefore assigned and conveyed respectively, shall at the request and cost of the said A. B., his executors, administrators, or assigns, be reassigned and reconveyed to him or them, subject as to the said hereditaments and premises to such right or equity of redemption (if any) as shall for the time being be subsisting therein under or by virtue of the hereinbefore recited indenture: PROVIDED ALWAYS, and it is hereby agreed and declared, that it shall not be incumbent on the said C. D., his executors, administrators, or assigns, to sue for or require payment of the said principal

Covenant to pay principal and interest.

Mortgagee assigns mortgage debt.

To sub-mortgagee.

Mortgagee conveys mortgaged premises

to sub-mortgagee.

Proviso for redemption.

Provision for indemnity of sub-mortgagee.

(*a*) The 25th sect. sub-s. 6, of the Judicature Act, 1873, does not apply to an assignment by way of sub-mortgage. See Nat. P. Bank *v.* Harle, 6 Q. B. D. 626.

sum and interest hereby assigned, or any part thereof, unless he or they shall think fit so to do, nor shall he or they be responsible for any loss which may arise by reason of his or their omission or delay to enforce any of the said securities for the said principal sum and interest, or any part thereof.

MORTGAGE DEBT AND SECURITIES.

IN WITNESS, &c.

No. XXXV.

MORTGAGE *of* FREEHOLDS *to secure an* EXISTING DEBT *and* FUTURE ADVANCES.

TO SECURE EXISTING DEBT AND FUTURE ADVANCES.

THIS INDENTURE, made the —— day of ——, BETWEEN A. B. of, &c. (*mortgagor*), of the one part, and C. D. of, &c. (*mortgagee*), of the other part: WHEREAS the said A. B. is indebted to the said C. D. in the sum of £——: AND WHEREAS the said A. B. hath agreed to secure the repayment of the said sum of £——, and also of any further sum or sums of money which may hereafter be advanced to him by the said C. D., with interest for the same respectively, in the manner hereinafter expressed: NOW THIS INDENTURE WITNESSETH, that in consideration of the premises, the said A. B. hereby covenants with the said C. D. to pay to him, on the —— day of —— next, the sum of £——, with interest for the same after the rate of £—— per cent. per annum, computed from the date of these presents: AND ALSO to pay to the said C. D. such sum or sums of money as may hereafter be advanced by the said C. D. to the said A. B., with interest thereon after the rate aforesaid, computed from the time or respective times of advancing the same, such payment to be made on the —— day of ——, or the —— day of ——, which shall first happen after the principal money shall have been advanced as aforesaid: AND ALSO so long as any principal money hereinbefore covenanted to be paid shall remain unpaid after the day hereby appointed for payment thereof to pay to the said C. D. interest thereon after the rate aforesaid, on the —— day of ——, and the —— day of ——: AND THIS INDENTURE ALSO WITNESSETH, that in consideration of the premises

Parties.

Recite that mortgagor is indebted and agreement for security.

Covenant by mortgagor to pay principal and interest, and to repay further advances and interest thereon.

TO SECURE EXISTING DEBT AND FUTURE ADVANCES.

Conveyance to mortgagee, subject to redemption.

the said A. B., as beneficial owner, hereby conveys unto the said C. D., ALL, &c. (*parcels*): TO HOLD the same unto and to the use of the said C. D., in fee simple: PROVIDED ALWAYS, that if the principal sum or sums of money hereinbefore covenanted to be paid, with interest thereon, shall be duly paid at the time or times hereinbefore appointed for payment thereof, then and in such case the said premises shall, at the request and cost of the said A. B., be re-conveyed to him in fee simple. (*Declaration as to leasing power, if desired, suprà*, p. 516.)

IN WITNESS, &c.

INDORSEMENT *to be* MADE *on the* ABOVE DEED *on the occasion of a* FURTHER ADVANCE.

I HEREBY ACKNOWLEDGE to have this day received from the within-named C. D. the sum of £——, being a further sum advanced on the within-mentioned security.

DATED this —— day of ——.

A. B.

No. XXXVI.

TO BANKING COMPANY TO SECURE ACCOUNT CURRENT.

MORTGAGE *of* FREEHOLDS *to a* BANKING COMPANY *to secure* BALANCE OF ACCOUNT CURRENT.

Parties.

THIS INDENTURE, made the —— day of ——, BETWEEN A. B. of, &c. (hereinafter called "the mortgagor"), of the one part, and The —— Banking Company (hereinafter called "The Company"), of the other part, WITNESSETH,

Covenant by mortgagor with company to pay moneys owing on account current.

that the mortgagor hereby covenants with the Company that he, the mortgagor, will pay to the Company all sums of money which now are or shall from time to time hereafter become owing from the mortgagor to the Company, whether alone or in co-partnership with any other person or persons in account current with the Company, or upon any cheques, promissory notes, or bills of exchange, drawn, accepted, or indorsed by the mortgagor, or which shall have been paid for his credit either solely or jointly with others (including interest with half-yearly rests, commis-

sion, and other customary charges), when thereunto required by the Company, or their Secretary or Manager, or any Branch Manager thereof; and if at the time when the said account current shall be closed by the death of the mortgagor or otherwise, a balance thereon, or any other moneys intended to be secured by these presents, shall be owing to the Company, the mortgagor will forthwith pay such balance or other moneys as aforesaid, with interest thereon, after the rate of £5 per cent. per annum, computed from the time when the same shall be ascertained: AND THIS INDENTURE ALSO WITNESSETH, that the mortgagor, as beneficial owner, hereby conveys unto the Company ALL, &c. (*parcels*): TO HOLD the same unto the Company, in fee simple: PROVIDED ALWAYS that if all moneys hereinbefore covenanted to be paid shall be duly paid accordingly, then the said hereditaments and premises shall, at the request and cost of the mortgagor, his heirs or assigns, be re-conveyed to him or them: AND THE mortgagor hereby covenants with the Company that he will at all times during the continuance of this security keep the buildings on the mortgaged premises insured against loss or damage by fire in their full value, and will, on demand, produce to the Company the policy of such insurance and the receipt for every premium payable for that purpose: AND IT IS HEREBY DECLARED (*a*) that the Company may at any time or times hereafter sell the hereditaments and premises hereby conveyed, or any part thereof, and shall have all the powers as regards the mode of sale and otherwise which by the Conveyancing and Law of Property Act, 1881,

TO BANKING COMPANY TO SECURE ACCOUNT CURRENT.

Conveyance of freeholds to company.

Proviso for redemption.

Covenant by mortgagor for insurance.

Power of sale.

(*a*) This power of sale may be omitted in reliance on the power conferred by the Conveyancing Act, 1881, where the conditions annexed to that power by section 20 are not objected to, or the power may be embodied with a variation, as follows:

AND IT IS DECLARED that the power of sale conferred on mortgagees by the Conveyancing and Law of Property Act, 1881, shall apply to these presents with this variation, that the power may be exercised if default is made in payment of the mortgage-money or part thereof for one calendar month instead of three months after service of the notice required by section 20 of the said Act, and for the purpose of the said statutory power the money hereby secured shall be deemed to have become due immediately after the execution of these presents.

Statutory power to apply, with a variation.

TO BANKING COMPANY TO SECURE ACCOUNT CURRENT.

are annexed to the power of sale thereby given to mortgagees: AND shall, out of the moneys to arise from any such sale, in the first place, pay and retain the costs and expenses attending such sale, or otherwise incurred in relation to this security, and in the next place pay and satisfy the moneys which shall then be owing upon this security, and shall pay the surplus, if any, to the mortgagor, his heirs or assigns: PROVIDED ALWAYS that the aforesaid power of sale shall not be exercised unless default shall be made in payment of the balance owing on the said account current or other the moneys due from the mortgagor, or some part thereof, for one calendar month after the said account current has been closed, or after a notice in writing demanding such payment shall have been given by or on behalf of the Company to the mortgagor, or left for him at his usual or last-known place of abode in England or Wales, or at or upon some part of the hereditaments hereby conveyed: BUT so that no purchaser at any sale under the aforesaid power shall be bound or concerned to see or inquire whether any default shall have been made as aforesaid or otherwise as to the necessity or propriety of such sale, nor shall his title be impeached on the ground that no such default has been made, or that the sale is otherwise unnecessary or improper. (*Declaration as to leasing power if desired, suprà*, p. 516.)

IN WITNESS, &c.

No. XXXVII.

TO TRUSTEES FOR BANKING COMPANY TO SECURE ACCOUNT CURRENT.

MORTGAGE *to* TRUSTEES *for* UNINCORPORATED BANKING COMPANY *to secure* BALANCE *of* ACCOUNT CURRENT.

Parties.

THIS INDENTURE, made the —— day of ——, BETWEEN A. B. of, &c., (*mortgagor*), of the one part, and C. D. and E. F. of, &c., trustees of the —— Banking Company, of the other part, WITNESSETH, that the said A. B.

Covenant to pay principal and interest.

(hereinafter called the mortgagor), hereby covenants with the said C. D. and E. F. that he the mortgagor will pay to the said company, &c. (*same as last Precedent, to beginning of second testatum, suprà*, p. 566): AND THIS INDENTURE

Mortgagor conveys to company.

ALSO WITNESSETH, that the mortgagor, as beneficial

owner, hereby conveys unto the said C. D. and E. F., ALL, &c. (*parcels*), To HOLD the same unto and to the use of the said C. D. and E. F. in fee simple (*Proviso for redemption, and power of sale if desired, as in last Precedent, suprà*, p. 567): AND IT IS HEREBY AGREED AND DECLARED, that if at any time or times during the continuance of this security the hereditaments and premises hereby conveyed shall be conveyed to any other persons or person as trustees or a trustee of the said company, for the purposes of this security, so as to vest in them or him, either solely or jointly with the trustees or trustee by whom such conveyance shall be made, then and in every such case the persons or person in whom the said hereditaments and premises shall for the time being be vested as aforesaid shall and may have and exercise the statutory power of sale and all other powers vested in the said C. D. and E. F., as fully and effectually as if they or he had been named herein, instead of the said C. D. and E. F., and the statement in any deed by which the said hereditaments and premises shall or may be conveyed as aforesaid that the persons or person to whom the same shall be thereby conveyed are or is trustees or a trustee of the said company shall be conclusive evidence of the fact so stated, and no purchaser or other person deriving title to the said hereditaments and premises, or any part thereof, through any act of the persons or person to whom such statement shall relate, shall be bound or concerned to see or inquire whether the same persons or person shall have been duly and properly constituted such trustees or trustee: AND IT IS HEREBY ALSO AGREED AND DECLARED, that the acknowledgment by the persons or person in whom the hereditaments and premises hereby conveyed shall for the time being be vested for the purposes of this security, or by any two directors of the said company, that the moneys hereby secured have been fully satisfied, shall be conclusive evidence that the same have been satisfied accordingly: AND IT IS HEREBY LASTLY AGREED AND DECLARED, that these presents shall be a security to the said banking company for the moneys hereby secured, of whatever shareholders or partners the said company may from time to time consist, and under whatever style or firm the banking business now carried on by the said company may for the time being be carried on. (*Declaration as to leasing power if desired, suprà*, p. 516.)

IN WITNESS, &c.

TO TRUSTEES FOR BANKING COMPANY TO SECURE ACCOUNT CURRENT.

Power of sale and other powers may be exercised by any persons in whom property may become vested as trustees of the company.

Acknowledgment by trustees, or by two directors, to be conclusive evidence that moneys are satisfied.

Security to extend to future shareholders of company.

No. XXXVIII.

MORTGAGE OF FREEHOLDS AND LEASEHOLDS COMPRISED IN DOCUMENTS IN SCHEDULE. (*Short Form.*)

MORTGAGE *to a* BANKING COMPANY *of* FREEHOLDS *and* LEASEHOLDS *comprised in the* DOCUMENTS *contained in* SCHEDULE *to secure* BALANCE *of* ACCOUNT CURRENT. (*Short form*) (*a*).

Parties.

THIS INDENTURE, made the —— day of ——, BETWEEN A. B. of, &c. (*mortgagor*), of the one part, and the —— Banking Company (hereinafter called "The Company"), of the other part: WITNESSETH, that the said A. B. (hereinafter called the mortgagor), hereby covenants with the company (*Covenant by mortgagor to pay moneys owing on account current, suprà*, p. 566): AND THIS INDENTURE ALSO WITNESSETH, that the mortgagor, as beneficial owner, hereby conveys and demises unto the company, THE hereditaments and property comprised in the documents set forth in the schedule hereto: TO HOLD the same as to such of them as are freehold unto the company in fee simple, and as to such of them as the mortgagor is entitled to for any term or terms of years, whether absolute or determinable, unto the company, for all the residue now unexpired of the said terms of years respectively (except the last day of such terms respectively): PROVIDED ALWAYS, that if all moneys hereinbefore covenanted to be paid shall be duly paid pursuant to the fore-

Covenant by mortgagor to pay money owing on account current.

Mortgagor conveys and demises freeholds and leaseholds comprised in documents in schedule to company as to freeholds absolutely, as to leaseholds for residue of terms except last day.

Proviso for redemption.

(*a*) It may often be expedient for the company to require that a short mortgage by deed of the property comprised in the deposited documents should be executed by the borrower in preference to a mere memorandum under his hand, so that the bankers may at once obtain all the proper remedies, including a power to sell in case of default, without the necessity of any application to the Court for the purpose, and also the advantage of priority, which the acquisition of the legal estate without notice of prior equitable incumbrances may frequently afford.

Advantage of mortgage by deed over memorandum.

When the advances may be large, the perfectness and efficiency of the security ought not to be sacrificed to the consideration that the mortgage deed will become a document of title, and will require a reconveyance when the debt is satisfied. The losses which bankers incur and the expenses to which they are often put in consequence of not taking a legal mortgage are sufficient reasons for altering the practice in many instances. The *ad valorem* stamp required for a memorandum of deposit, and for a mortgage by deed for the same purpose and amount are identical.

Reconveyance.

The reconveyance may be framed in a few words, and endorsed on the mortgage deed. For a form of such reconveyance and surrender, as being applicable to the present form of mortgage as soon as the debt is satisfied, see, *infrà*, p. 571.

going covenant, the said premises shall, at the request and cost of the mortgagor, be reassured to him; AND IT IS DECLARED, that the company may at any time or times hereafter sell the premises hereby conveyed and assigned, or any part thereof, &c. (*as in Precedent No.* 36, *suprà, p.* 567, *to the end, and adding*); And it is also declared, that after any sale of leasehold property the mortgagor, his executors, administrators, or assigns, shall stand possessed of the last day of the term subsisting in the property so sold under the lease thereof, IN TRUST for the purchaser, and to be assigned and disposed of as he shall direct. (*Declaration as to leasing power if desired. See suprà*, p. 516.)

MORTGAGE OF FREEHOLDS AND LEASEHOLDS COMPRISED IN DOCUMENTS IN SCHEDULE.

Power of sale.

Trusts of purchase-money.

IN WITNESS, &c.

THE SCHEDULE ABOVE REFERRED TO.

No. XXXIX.

RECONVEYANCE *of* FREEHOLDS *and* SURRENDER *of* LEASEHOLDS *by a* BANKING COMPANY *on all* MONEYS *being* PAID OFF (*by deed* ENDORSED *or* WRITTEN AT THE END *of the* MORTGAGE DEED) (*a*).

RECONVEYANCE AND SURRENDER OF FREEHOLDS AND LEASEHOLDS BY A BANKING COMPANY.

THIS INDENTURE, made the —— day of ——, BETWEEN the within [*or* above] named Company of the one part, and the within [*or* above] named A. B. of the other part: WITNESSETH, that the said company hereby acknowledges that all moneys secured by the within [*or* above] written indenture have been paid and satisfied, and in consideration thereof the said company as mortgagee hereby conveys and surrenders unto the said A. B., ALL the hereditaments and property comprised in the within [*or* above] written indenture, as to such of them as are freehold, unto and to the use of the said A. B., in fee simple, and as to such of them as are leasehold to the intent that the derivative terms

Parties.

Acknowledgment that all moneys have been paid.

Company conveys and surrenders freeholds and leaseholds to mortgagor.

(*a*) It is apprehended that the stamp would be determined by the *ad valorem* stamp on the indenture of mortgage. In other words, the reconveyance must carry a stamp of 6*d.* for every 2*s.* 6*d.*, with which the mortgage deed is stamped.

RECONVEYANCE AND SURRENDER OF FREEHOLDS AND LEASEHOLDS BY A BANKING COMPANY.

of years created by the said indenture shall cease and determine, and as to all the said hereditaments and property absolutely discharged from the moneys secured by the said indenture, and all claims and demands on account thereof.

IN WITNESS, &c.

No. XL.

FROM PARTNERS TO BANKERS TO SECURE ACCOUNT CURRENT.

MORTGAGE *of* FREEHOLDS *by a* MEMBER *of a* PARTNERSHIP FIRM *to a* FIRM *of* BANKERS *to secure* BALANCE *of an* ACCOUNT CURRENT *of the* PARTNERSHIP FIRM *with the* BANKERS. BOTH *members of one* PARTNERSHIP FIRM *covenant to pay* PRINCIPAL *and* INTEREST.

Parties.

THIS INDENTURE, made the —— day of ——, BETWEEN W. X. of, &c. (*one of the mortgagors*), of the first part, Y. Z. of, &c., partner with the said W. X., under the firm of "W. X. and Y. Z." (*other of the mortgagors*), of the second part, P. Q. and R. S. of, &c., bankers and partners, under the firm of "P. Q. and R. S." (*mortgagees*), of the third part, and A. B. of, &c., and C. D. of, &c., being trustees nominated for the purpose of these presents by the said P. Q. and R. S. (*trustees*), of the fourth part: WHEREAS the firm of W. X. and Y. Z. have for some time past kept an account with the said firm of P. Q. and R. S. at their bank at ——, and a balance is now owing from them on such account to the said firm: AND WHEREAS the said W. X. and Y. Z. have lately executed a conveyance and assignment by way of mortgage of certain estates, debts, and effects of the said W. X. and Y. Z. in the West Indies, to trustees for the said firm of P. Q. and R. S., for securing the payment of all such sum or sums of money as now are or may from time to time hereafter be due and owing from the said firm of W. X. and Y. Z. to the said firm of P. Q. and R. S. in account current with the last-mentioned firm: AND WHEREAS it has been agreed that the payment of such sum or sums of money as aforesaid shall be further secured in the manner hereinafter expressed: NOW

Recite that balance is due to mortgagees.

Security already executed.

Agreement for present mortgage.

FROM PARTNERS TO BANKERS TO SECURE ACCOUNT CURRENT.

THIS INDENTURE WITNESSETH, that in pursuance of the said agreement, and in consideration of the premises, the said W. X. and Y. Z. jointly and severally covenant with the said P. Q. and R. S., that they the said W. X. and Y. Z., or one of them, will on demand pay to the said firm of P. Q. and R. S. all moneys which now are or at any time or times hereafter may become due and owing from the said firm of W. X. and Y. Z. in account current with the said firm of P. Q. and R. S., and in particular will, upon the closing of the said account current, forthwith pay the balance then owing thereon to the said firm of P. Q. and R. S., and will pay interest on such balance (while unpaid) after the rate of £5 per cent. per annum, computed from the time when the same shall be ascertained: AND IT IS DECLARED that the said firm of P. Q. and R. S. may close the said account current whenever they shall think fit, and they shall thereupon notify the same to the said firm of W. X. and Y. Z. by a letter left for the said firm at their place of business, as stated in the books of the firm of P. Q. and R. S., or in any other reasonable manner which the last-mentioned firm shall think fit: AND THIS INDENTURE ALSO WITNESSETH, that in further pursuance of the said agreement, and in consideration of the premises, the said W. X., as beneficial owner, with the privity of the said Y. Z., and on the nomination of the said P. Q. and R. S. (testified by their respectively being parties to and executing these presents) hereby conveys unto the said A. B. and C. D., FIRST, ALL THAT, &c.; SECONDLY, ALL THAT, &c. (*parcels*): TO HOLD the same unto and to the use of the said A. B. and C. D. in fee simple, subject nevertheless to the proviso for redemption following (namely, that if the moneys hereinbefore covenanted to be paid shall be paid accordingly, the said premises shall, at the request and cost of the said W. X., be reconveyed to him, or as he shall direct: AND IT IS HEREBY AGREED AND DECLARED, that the premises hereby conveyed may from time to time during the continuance of this security be conveyed unto and to the use of any person or persons whom the said firm of P. Q. and R. S. shall or may nominate as their trustee or trustees for the purposes of this security, and such trustee or trustees shall and may have and exercise the statutory power of sale, and all other powers vested in the mortgagees, in like manner as if he or they had

Covenant by mortgagors, for payment of moneys owing on account current.

Conveyance by mortgagor.

Parcels,

to mortgagees in fee, subject to proviso for redemption.

Property may be conveyed to other trustees during continuance of security.

FROM PARTNERS TO BANKERS TO SECURE ACCOUNT CURRENT.

been named herein instead of the said A. B. and C. D.: AND IT IS HEREBY ALSO AGREED AND DECLARED, that the expression, "the firm of W. X. and Y. Z." used in these presents shall signify and extend to as well the said W. X. and Y. Z. as also any other person or persons who may for the time being constitute the firm now described as the firm of W. X. and Y. Z., and the expression "the firm of P. Q. and R. S." used in these presents shall signify and extend to as well the said P. Q. and R. S. as also any other person or persons who may for the time being constitute the firm now described as the firm of P. Q. and R. S. (*Declaration as to leasing power if desired. See suprà*, p. 516.)

Interpretation of certain expressions.

IN WITNESS, &c.

No. XLI.

OF FREEHOLDS TO A BUILDING SOCIETY.

MORTGAGE *of* FREEHOLDS *to a* BUILDING SOCIETY (*a*).

THIS INDENTURE, made the —— day of ——, BETWEEN A. B. of, &c. (hereinafter called "the mortgagor"), (*mortgagor*), of the one part, and the —— Benefit Building Society, incorporated pursuant to the "Building Societies Act, 1874" (hereinafter called "the said society"), (*mortgagees*), of the other

Parties.

The Building Societies Act, 1874.

(*a*) The Act 6 & 7 Wm. 4, c. 32, for the regulation of Benefit Building Societies, is repealed by the Building Societies Act, 1874 (37 & 38 Vict. c. 42, s. 7); but the repeal does not affect any subsisting society certified under the repealed Act, until such society shall have obtained a certificate of incorporation under the new Act. Any society whose rules have been certified under the Act of Wm. 4 may obtain a certificate of incorporation under the new Act (38 Vict. c. 9, s. 2); and every subsisting or future society, upon receiving a certificate of incorporation, becomes a body corporate by its registered name (37 & 38 Vict. c. 42, s. 9).

Any society may, from time to time, as the rules permit, invest any portion of its funds upon real or leasehold securities, or other specified securities (sec. 25).

Whenever a member of a society having executed a mortgage to the society dies intestate, leaving an infant heir, the society, after selling the mortgaged property, may pay to his administrator the surplus proceeds of the sale to the amount of £150, without paying it into the Post Office Savings Bank, under 30 & 31 Vict. c. 142, s. 24 (sect. 30).

Sect. 41 exempts from stamp duty the rules of the society and other documents therein mentioned, but provides that the exemption shall not extend to any mortgage.

See the "Building Societies Amendment Act" (40 & 41 Vict. c. 42).

part: WHEREAS the mortgagor is the owner of —— shares in the said society, numbered respectively ——, and he is by the rules of the said society entitled to an advance of £—— in respect of each of the said shares, making an aggregate advance of £——, on his executing the mortgage hereinafter contained: NOW THIS INDENTURE WITNESSETH, that in consideration of the sum of £—— to the mortgagor paid by the said society on or before the execution of these presents (the receipt whereof the mortgagor hereby acknowledges), the mortgagor as beneficial owner hereby conveys unto the said society, ALL THOSE, &c. (*parcels*): TO HOLD the same unto and to the use of the said society in fee simple, UPON TRUST to permit the mortgagor, to hold and enjoy the said hereditaments and premises, and receive the rents and profits thereof, so long as the mortgagor shall duly pay the subscriptions and other sums of money which ought from time to time to be paid in respect of the said shares, according to the rules for the time being in force of the said society, and shall in all respects duly observe the said rules and also the covenants and provisions hereinafter contained which ought on his part to be observed and performed: BUT IN CASE the mortgagor shall at any time fail for three calendar months to pay the said subscriptions and other sums of money, or any of them, or shall at any time fail in other respects to observe and perform the said rules, covenants, and provisions, or any of them, then and in any or either of the said cases it shall be lawful for the said society at any time thereafter to take possession of the said hereditaments and premises, and to let the same for any term, and upon such conditions as they shall think fit, and to appoint any person or persons, at such remuneration as they shall think proper, to collect the rents and profits of the said hereditaments and premises on behalf of the said society until sale thereof, and also at the discretion of the said society, without giving any previous notice in that behalf to the mortgagor, to sell the said hereditaments and premises, with all such powers as regards the mode of sale and otherwise as are by the Conveyancing and Law of Property Act, 1881, annexed to the power of sale conferred by that Act on mortgagees: AND IT IS HEREBY DECLARED that the said society shall, with and out of any rents or sale moneys received by them as aforesaid, in the first place retain and pay all costs, charges, and expenses incurred by them in

OF FREEHOLDS TO A BUILDING SOCIETY

Advance mortgagor is entitled to in respect of his shares.

Consideration paid by society to mortgagor.

Mortgagor conveys parcels to society,

upon trust to permit mortgagor to enjoy the hereditaments so long as payments are duly made and covenants are duly performed.

But in case of default, all the subscriptions and other payments are to become due,

and society may take possession of or let hereditaments,

and appoint a receiver,

and sell hereditaments.

Rents and sale moneys to be applied in payment of costs, then in payment

OF FREEHOLDS TO A BUILDING SOCIETY.

relation to this security; and in the next place shall retain all subscriptions, fines, and other moneys then due, or which may thereafter become due in respect of the said shares or under this security: AND shall pay the surplus (if any) to the mortgagor: AND IT IS HEREBY DECLARED, that upon any lease or sale made by the said society under any of the aforesaid powers in that behalf, the lessee or purchaser shall not be bound or concerned to see or inquire whether any of the cases have happened in which such lease or sale is hereinbefore authorised to be made, or otherwise as to the propriety of such lease or sale, or be affected by notice that no such case as aforesaid has happened, or that the lease or sale is otherwise improper: AND IT IS HEREBY ALSO DECLARED that no lease made by the mortgagor of the said premises during the continuance of this security shall have effect by force or virtue of section 18 of the Conveyancing and Law of Property Act, 1881, unless the said society shall consent thereto in writing: AND THE mortgagor hereby covenants with the said society, THAT he the mortgagor will from time to time make the several payments and observe and perform the rules for the time being in force of the said society in respect of the said shares which on his part ought to be paid, observed, and performed: AND ALSO will at all times during the continuance of this security keep the said hereditaments and premises in good, substantial, and complete repair and condition, and also keep the same insured against loss or damage by fire in the sum of £—— at least, and will, on demand, produce to the said society the policy of such insurance and the receipt for every premium payable in respect thereof: AND IT IS HEREBY ALSO DECLARED, that if any case shall happen in which the said society shall be entitled to enter into possession under these presents, and if at that time or at any time thereafter the mortgagor shall be in the actual occupation of the premises or any part thereof, then and in such case the mortgagor shall during such occupation be deemed the tenant of the said society, at the monthly rent of £——, payable on the first day of every calendar month, the first payment thereof to be made on such of the said days as shall first happen after the commencement of the tenancy: PROVIDED ALWAYS, that the said society may at any time during such tenancy as aforesaid enter into and upon the said hereditaments or any part thereof and determine the tenancy

of subscriptions, fines, &c.

Surplus to be paid to mortgagor.

Lessees and purchasers not bound to inquire as to default.

Declaration as to leasing power.

Covenants by mortgagor, that he will make the payments and observe the rules;

that he will keep the premises in good repair, and insured against fire.

Attornment clause.

without giving to the mortgagor any notice to quit: (*a*) PROVIDED ALWAYS, that the powers hereby conferred on the said society are in addition to all other powers and remedies vested in the said society under the rules and regulations thereof, or by statute for recovering or enforcing payment of the moneys intended to be hereby secured: AND IT IS HEREBY DECLARED that, where the context allows, the expression "the mortgagor" used in these presents includes, besides the said A. B., all persons deriving title under him.

OF FREEHOLDS TO A BUILDING SOCIETY.

Proviso that powers conferred are in addition to other powers and remedies.

Interpretation of term "mortgagor."

IN WITNESS, &c.

No. XLII.

MORTGAGE *of* LEASEHOLDS *to a* BUILDING SOCIETY.

OF LEASEHOLDS TO A BUILDING SOCIETY.

THIS INDENTURE, made the —— day of ——, BETWEEN A. B., of, &c. (hereinafter called "the mortgagor") (*mortgagor*), of the one part, and the —— Building Society, incorporated pursuant to the "Building Societies Act, 1874" (hereinafter called "the said society"), (*mortgagees*), of the other part: WHEREAS by an indenture of lease, dated the —— day of ——, and made between ——, of the one part, and the said A. B. of the other part: ALL THAT piece or parcel of ground (*parcels as in the lease*) were demised unto the mortgagor, his executors, administrators, and assigns, for the term of ninety-nine years, from the —— day of ——, at the yearly rent of £——, and subject to the covenants and conditions therein contained, and on the part of the lessee to be observed and performed: AND WHEREAS by another indenture of lease, bearing even date with the last recited indenture, and made between the same persons as are parties to the last recited [indenture, ALL THAT other piece or parcel of ground (*parcels as in this lease*) were demised

Parties.

Recite one indenture of lease,

another indenture of lease.

(*a*) See notes (*a*) and (*b*), supra, p. 540. It is not a valid objection to an attornment clause that the rent is made to fluctuate in amount, as where in a building society mortgage it is provided that the monthly rent shall be equal to the sum which ought to be paid monthly for subscriptions, &c.; In re Knight, 21 Ch. D. 442. But it is submitted that the preferable plan is to fix the monthly rent at a sum which will in all probability be adequate to meet any monthly deficiency.

In an attornment clause rent may fluctuate in amount.

OF LEASEHOLDS TO A BUILDING SOCIETY.

unto the mortgagor, his executors, administrators, and assigns, for the like term of ninety-nine years, from the said —— day of ——, at the like yearly rent of ——, and subject to the covenants and conditions therein contained, and on the part of the lessee to be observed and performed (*Recital that mortgagor is entitled to advance in respect of his shares, suprà*, p. 575): NOW THIS INDENTURE WITNESSETH, that in consideration of the sum of £—— paid to the mortgagor by the said society on or before the execution of these presents (the receipt whereof the mortgagor hereby acknowledges), the mortgagor, as beneficial owner, hereby demises unto the said society, ALL the pieces or parcels of ground, hereditaments, and premises, comprised in and demised by the two hereinbefore recited indentures of lease respectively: TOGETHER WITH the three several messuages or dwelling-houses and the buildings in connection therewith lately erected and built on the said demised premises: TO HOLD the same unto the said society during all the residue now unexpired of the said two several terms of ninety-nine years granted therein by the said indentures of lease respectively (except the last day of each of the said terms): UPON TRUST to permit the mortgagor to hold and enjoy the said hereditaments and premises, and receive the rents and profits thereof so long as the mortgagor shall duly pay the subscriptions and other sums of money which ought from time to time to be paid in respect of the said shares, according to the rules for the time being in force of the said society, and shall in all respects duly observe the said rules, and shall also pay the rents reserved by the said indentures of lease, and observe and perform the covenants and conditions therein contained which ought on the lessee's part to be observed and performed: BUT IN CASE he shall at any time fail for three calendar months to pay the said subscriptions and other sums of money, or any of them, or shall at any time fail in other respects to observe and perform the said rules, covenants, and conditions or any of them, then and in any or either of the said cases (*society may take possession of or let hereditaments—appoint a receiver and sell hereditaments*, see *suprà*, p. 575), AND IT IS HEREBY DECLARED that the said society shall out of any rents or sale moneys received by them as aforesaid, in the first place retain and pay all costs,

Mortgagor demises leasehold parcels

to society for residue of terms (less one day).

In trust for mortgagor until default in making the payments.

In case of default society may take possession and let or sell.

Declaration as to application of rents and sale moneys

charges, and expenses, incurred by them in relation to this security, including any costs, charges, or expenses which may be incurred in preserving the said hereditaments and premises from forfeiture, by paying the several rents, or performing the several covenants on the lessee's part respectively reserved and contained by and in the said two recited indentures of lease, AND in the next place shall retain all subscriptions, fines, and other moneys which shall then be due, or which may thereafter become due in respect of the said shares or under this security, and shall pay the surplus (if any) to the mortgagor (*Lessees and purchasers not bound to inquire as to default, suprà*, p. 576): AND IT IS HEREBY DECLARED that after any sale made by the said Society, the mortgagor shall hold the premises sold for the last day of the term granted therein by the said indenture of lease, in trust for the purchaser, and to be assigned and disposed of as he may direct (*Declaration as to leasing power, suprà*, p. 576): AND THE mortgagor hereby covenants with the said society to pay the subscriptions and other sums which ought from time to time to be paid in respect of the said shares according to the rules for the time being of the said society, and in all respects to observe the said rules (*a*): (*Attornment clause—576—proviso that powers given by this deed are in addition to other powers and remedies. Interpretation of term "the mortgagor," suprà*, p. 577).

OF LEASEHOLDS TO A BUILDING SOCIETY.

and apply sale moneys after payment of expenses in discharge of subscriptions and other payments due.

Trust of last day of term after a sale.

Covenants by mortgagor to make payments.

IN WITNESS, &c.

No. XLIII.

MORTGAGE *to* TWO PERSONS *who* ADVANCE *the* MONEY *in* EQUAL SHARES.

TO TWO MORTGAGEES.

THIS INDENTURE, made the —— day of ——, BETWEEN A. B., of, &c. (*mortgagor*), of the one part, and C. D., of, &c., and E. F. of, &c. (*mortgagees*), of the other part: WITNESSETH, that in consideration of the sum of £1000 paid to the said A. B.

Parties.

(*a*) It is assumed that the lease contains covenants to repair and insure, in which case it is unnecessary to insert any such covenants in the mortgage, because they will be covered by the covenants implied under sec. 7 of the Conveyancing Act, 1881, to observe the covenants in the lease.

TO TWO MORTGAGEES.

by the said C. D. and E. F. in equal shares, on or before the execution of these presents (the receipt whereof the said A. B. hereby acknowledges), the said A. B. hereby covenants with the said C. D. and E. F., to pay to them in equal shares, on the —— day of —— next, the sum of £1000, with interest thereon in the meantime, after the rate of £—— per cent. per annum, computed from the date of these presents, AND also so long after that day as any principal-money remains due under these presents, to pay to them interest thereon after the same rate by equal half-yearly payments, on the —— day of ——, and the —— day of ——: AND THIS INDENTURE ALSO WITNESSETH, that for the consideration aforesaid, the said A. B., as beneficial owner, hereby conveys unto the said C. D. and E. F., ALL, &c. (*parcels*): TO HOLD the same unto and to the use of the said C. D. and E. F. in fee simple, as tenants in common: PROVIDED ALWAYS that if the said sum of £1,000, with interest thereon, shall be paid on the —— day of —— next, according to the foregoing covenant in that behalf, the said premises shall, at the request and cost of the said A. B., his heirs or assigns, be reconveyed to him or them. (*Declaration as to leasing power if desired, suprà*, p. 520.)

Covenant by mortgagor to pay principal and interest.

Mortgagor conveys

to mortgagees, subject to proviso for redemption.

IN WITNESS, &c.

No. XLIV.

TO SEVERAL PERSONS IN UNEQUAL SHARES.

MORTGAGE *to* FOUR *persons*, TWO *of whom advance part of the money in* UNEQUAL *shares, and the* OTHER TWO *advance the* REMAINDER *on a* JOINT ACCOUNT (*a*).

Parties.

THIS INDENTURE, made the —— day of ——, BETWEEN A. B., of, &c. (*mortgagor*), of the first part, C. D., of, &c. (*one mortgagee*), of the second part, E. F., of, &c. (*another mortgagee*), of the third part, and G. H., of, &c., and I. K., of, &c.

(*a*) Where several persons contribute the money advanced between them, it is generally convenient to take the mortgage in the names of some of them, or their nominees, as joint tenants, with a separate declaration of trust. The above precedent will, however, be found useful in cases where it is wished to have one deed only.

(*other mortgagees*), of the fourth part, WITNESSETH, that in consideration of the sum of £100 paid to the said A. B. by the said C. D. on or before the execution of these presents (the receipt whereof the said A. B. hereby acknowledges), the said A. B. hereby covenants with the said C. D., &c. (*to pay principal and interest, suprà*, p. 515): AND THIS INDENTURE FURTHER WITNESSETH, that in consideration of the sum of £200 paid to the said A. B. by the said E. F. on or before the execution of these presents (the receipt whereof the said A. B. hereby acknowledges), the said A. B. hereby covenants with the said E. F., &c. (*to pay principal and interest, suprà*, p. 515): AND THIS INDENTURE ALSO WITNESSETH, that in consideration of the sum of £150 paid to the said A. B. by the said G. H. and I. K. on or before the execution of these presents, out of money belonging to them on a joint account (the receipt whereof the said A. B. hereby acknowledges), the said A. B. hereby covenants with the said G. H. and I. K., &c. (*to pay principal and interest, suprà*, p. 520): AND THIS INDENTURE ALSO WITNESSETH, that for the considerations hereinbefore expressed the said A. B., as beneficial owner, hereby conveys unto the said C. D., E. F., G. H., and I. K., All, &c. (*parcels*): To HOLD the same unto and to the use of the said C. D., E. F., G. H., and I. K., in fee simple: PROVIDED ALWAYS, that if the said principal sums of £100, £200, and £150, with interest thereon, respectively, shall be paid on the said —— day of —— next, according to the foregoing covenant in that behalf, the said premises shall, at the request and cost of the said A. B., his heirs or assigns, be reconveyed to him or them: AND IT IS HEREBY DECLARED that during the continuance of this security, all persons in whom the hereditaments hereby conveyed shall for the time being be vested, shall hold the same in trust for the persons for the time being entitled to the principal sums of £100, £200, and £150, hereby secured, and the interest thereof respectively, *pari passu*, and without any preference or priority. (*Declaration as to leasing power if desired, suprà*, p. 520.)

IN WITNESS, &c.

TO SEVERAL PERSONS IN UNEQUAL SHARES.

Covenant by mortgagor with one mortgagee to pay money advanced by him.

Similar covenant with another.

Similar covenant with joint mortgagees.

Conveyance by mortgagor to all the mortgagees, subject to proviso for redemption.

No. XLV.

DECLARATION TRUST MONEY SECURED MORTGAGE CONTRIBUTED DIFFERENT LENDERS UNEQUAL PROPORTIONS MORTGAGE NAMES FOUR TRUSTEES NOMINATED LENDERS

DECLARATION *of* TRUST *of* MONEY SECURED *on* MORTGAGE, *and* CONTRIBUTED *by* DIFFERENT LENDERS *in* UNEQUAL PROPORTIONS, *the* MORTGAGE *having been taken in the* NAMES *of* FOUR TRUSTEES NOMINATED *by the* LENDERS (*a*).

DECLARATION OF TRUST ON CONTRIBUTORY MORTGAGE.

TO ALL TO WHOM THESE PRESENTS shall come, A. B., of, &c., C. D., of, &c., E. F., of, &c., and G. H., of, &c., send greeting: WHEREAS by an indenture bearing even date with, but executed before these presents, and made between X. Y., of, &c., of the one part, and the said A. B., C. D., E. F., and G. H., of the other part, in consideration of the sum of £5000 therein expressed to be paid to the said X. Y. by the said A. B., C. D., E. F., and G. H., out of moneys belonging to them on a joint account divers messuages, lands, and hereditaments situate in the parish of ——, in the county of ——, therein more particularly described, have been conveyed unto and to the use of the said A. B., C. D., E. F., and G. H., in fee simple, by way of mortgage for securing the payment by the said X. Y., unto the said A. B., C. D., E. F., and G. H., of the sum of £5000, with interest for the same after the rate of £—— per cent. per annum, on the —— day of —— next, and in the said indenture is contained a covenant by the said X. Y. for the payment of the said principal sum of £5000, and the interest thereof: AND WHEREAS the sum of £5000 in the hereinbefore recited indenture expressed to be paid to the said X. Y. by the said A. B., C. D., E. F., and G. H. as aforesaid, was in fact money contributed by the several persons and in the shares and amounts next hereinafter mentioned (that is to say), the sum of £1000 (part thereof) by I. K., of, &c., the sum of £1500 (other part thereof) by L. M. and N. O., as the trustees of an indenture of settlement, dated the —— day of ——, and made upon the marriage of —— with —— the sum of £2000 (other part thereof) by P. Q. and R. S., the executors and trustees named in the will of ——, dated the —— day of

Recit: mortgage of even date for £5000.

That £5000 was contributed by several persons in different shares.

(*a*) The mortgage in this case is supposed to have been in the form of Precedent No. IV.

——, and the sum of £500 (residue thereof), by T. V., the wife of U. V. of, &c., being money belonging to her for her separate use: AND WHEREAS the said A. B., C. D., E. F., and G. H. have agreed at the request of the several persons by whom the said sum of £5000 was contributed as aforesaid, to execute such declaration of trust as is hereinafter contained: NOW THESE PRESENTS WITNESS, that in consideration of the premises, it is hereby declared that the said A. B., C. D., E. F., and G. H., shall stand and be possessed of and interested in the said sum of £5000 secured by the hereinbefore recited indenture, and the interest thereof, upon the trusts following (that is to say), AS TO the sum of £1000 (part of the said principal sum) and the interest of the said sum of £1000, in trust for the said I. K. absolutely, AS TO the sum of £1500 (other part of the said principal sum) and the interest of the said sum of £1500, in trust for the said L. M. and N. O., as the trustees of the said indenture of settlement of the —— day of ——, AS TO the sum of £2000 (other part of the said principal sum) and the interest of the said sum of £2000, in trust for the said P. Q. and R. S., as the trustees of the said will of the said ——, AND AS to the sum of £500 (residue of the said principal sum) and the interest of the said sum of £500, in trust for the said T. V., for her separate use, and so that the said I. K., L. M. and N. O., P. Q. and R. S., and T. V., respectively, shall be entitled to their several and respective shares in the said principal sum and interest *pari passu*, and without preference or priority: AND IT IS HEREBY FURTHER DECLARED that the said A. B., C. D., E. F., and G. H., shall stand and be seised and possessed of and interested in the hereditaments and premises conveyed by the hereinbefore recited indenture (subject to the right of redemption subsisting therein), and all other the securities for the said principal sum of £5000, and the interest thereof, IN TRUST for the said I. K. and L. M. and N. O., P. Q. and R. S., and T. V., according to their several shares and interests in the said principal sum of £5000 and the interest thereof.

DECLARATION OF TRUST ON CONTRIBUTORY MORTGAGE.

Agreement by trustees to execute declaration of trust.

Witnessing part.

Declaration by trustees that they will stand possessed of said £5000.

As to part for I. K.

As to other part for L. M. and N. O.

As to other part for P. Q. and R. S.

And as to residue for T. V. for her separate use.

No priority between cestuis que trust.

Declaration that trustees shall hold securities in trust for lenders according to their shares and interests.

IN WITNESS, &c.

No. XLVI.

OF PART OF A SUM SECURED ON CONTRIBUTORY MORTGAGE.

DECLARATION *of* TRUST *of* PART *of a sum of* MONEY *secured on a* CONTRIBUTORY MORTGAGE.

Parties.

THIS INDENTURE, made the —— day of ——, BETWEEN A. B. of, &c., C. D., of, &c., E. F. of, &c., and G. H., of, &c., of the one part, and I. K., of, &c., of the other part (*Recite mortgage to A. B., &c., for* £10,000): AND WHEREAS the sum of £2000 (part of the sum of £10,000 expressed to be paid by the said A. B., C. D., E. F., and G. H., in and by the said indenture) was the proper money of the said I. K.: NOW THIS INDENTURE WITNESSETH, that in consideration of the premises, IT IS HEREBY DECLARED AND AGREED, that the said A. B., C. D., E. F., and G. H., shall stand possessed of and interested in the sum of £2000 (part of the said principal sum of £10,000 secured by the hereinbefore recited indenture), and the interest of the said sum of £2000, In trust for the said I. K., absolutely, and so that as between the said sum of £2000 and the interest thereof, and the residue of the said sum of £10,000 and the interest thereof, there shall be no preference or priority.

Recite mortgage and that part of money belongs to cestui que trust.

Witnessing part.

Declaration of trust.

IN WITNESS, &c.

No. XLVII.

OF PART OF MONEY SECURED ON CONTRIBUTORY MORTGAGE.

DECLARATION *of* TRUST *of* PART *of a* SUM OF MONEY *secured on a* CONTRIBUTORY MORTGAGE (*a more special form*).

THIS INDENTURE, made, &c., BETWEEN A. B., of, &c., C. D., of, &c., E.F., of, &c., and G. H., of, &c. (*mortgagees*), (hereinafter called the said mortgagees), of the one part, and I. K., of, &c., and L. M., of, &c. (*one set of contributories being trustees*), of the other part (*Recite mortgage for* £10,000

containing a provision for reducing rate of interest if punctually paid): AND WHEREAS the sum of £10,000 so expressed to be paid by the said mortgagees was not the proper moneys of the said mortgagees, but was advanced or contributed by several persons or classes of persons in various amounts and to the intent that the same might be invested by the said mortgagees on the security so made to them as aforesaid: AND WHEREAS the sum of £2,000, part of the said sum of £10,000, was advanced or contributed by the said I. K. and L. M., as the said mortgagees do hereby admit, and the said mortgagees have agreed to execute such declaration of trust in favour of the said I. K. and L. M., as is hereinafter contained: AND WHEREAS the said mortgagees have executed or are about to execute similar declarations of trust in favour of the other persons or classes of persons by whom the remainder of the said sum of £10,000 was advanced or contributed as aforesaid: NOW THIS INDENTURE WITNESSETH, that the said mortgagees do hereby declare and agree to and with the said I. K. and L. M. that they, the said mortgagees, shall stand and be possessed of and interested in the sum of £2,000 (part of the said sum of £10,000 secured as hereinbefore is mentioned), and of and in a proportionate part of the interest of the said sum of £10,000, and (to the extent of the said sum of £2,000 and interest) of and in the mortgages and other securities for the said sum of £10,000, and the interest thereof, Upon trust for the said I. K. and L. M., as joint tenants, but *pari passu* with and without any preference or priority to or over the several contributories of the sum of £8,000, the residue of the said sum of £10,000, in respect of their several parts or proportions of the said residue, or of the interest thereof: PROVIDED ALWAYS that the said mortgagees, their executors, administrators, or assigns, shall not be answerable or accountable to the said I. K. and L. M., their executors, administrators, or assigns, for any defect or insufficiency of the said securities, or for omitting or neglecting until required so to do by the said I. K. and L. M., their executors, administrators, or assigns, to call in or require payment of the said sum of £10,000, or any part thereof, or to enforce the securities for the same, or any of them, notwithstanding the time for the payment thereof shall have arrived or have passed, nor for accepting interest on the said sum of £10,000 at the said

OF PART OF MONEY SECURED ON CONTRIBUTORY MORTGAGE.

Recite that mortgage money was contributed by various persons.

That part was contributed by persons named.

That mortgagees have given similar declarations to other contributories.

Declaration by mortgagees that they will hold part of the mortgage debt in trust for above-named persons.

Proviso for indemnity of mortgagees.

OF PART OF MONEY SECURED ON CONTRIBUTORY MORTGAGE.

reduced rate of £4 per cent. per annum, notwithstanding such interest may not be paid at or within the time for that purpose appointed by the said indenture of mortgage: PROVIDED ALSO that the said mortgagees, their executors, administrators, or assigns, shall be at liberty at any time and from time to time during the continuance of the said security, if they shall think fit and shall be so advised by counsel, and without any further consent on the part of the said I. K. and L. M., their executors, administrators, or assigns, to concur with the said —— (*the mortgagor*), or with other the person or persons for the time being competent in that behalf in the exercise of all or any of the powers of enfranchising, making partition, sale, exchange, leasing, and other powers contained in or referred to by indentures dated, &c., by which indentures the manor and other hereditaments charged with the said sum of £10,000 and commonly called "The C. Estate," were resettled subject to the same debt or to some part thereof upon such terms as the said mortgagees, their executors, administrators, or assigns, shall deem reasonable and expedient, and to release from the said debt of £10,000, or any part thereof, any part of the hereditaments for the time being charged therewith, or with any part thereof, on being satisfied that the other or remaining part of the said hereditaments for the time being charged therewith are of themselves a sufficient security for the same, or on other hereditaments being substituted for the released hereditaments, or some of them.

Power for mortgagees to consent to exercise of powers conferred on mortgagor by settlement,

and to release part of mortgaged property.

IN WITNESS, &c.

No. XLVIII.

MORTGAGE FOR TERM TO SECURE YOUNGER CHILDREN'S PORTIONS.

MORTGAGE *of* LANDS *under the* TRUSTS *of a* TERM *for* SECURING *younger* CHILDREN'S PORTIONS, *where neither the* PORTIONISTS *nor the* FREEHOLDER CONCUR (*a*).

Parties.

THIS INDENTURE, made, &c., BETWEEN A. B., of, &c., and C. D., of, &c. (*trustees of term for securing portions*), of the

(*a*) On a mortgage of land under the trusts of a term to raise portions for

one part, and E. F., of, &c. (*mortgagee*), of the other part: WHEREAS (*Recite settlement whereby certain hereditaments were conveyed to use of husband for life, remainder to uses to secure jointure for wife, remainder to the said A. B. and C. D. for* 1000 *years, and subject thereto to use of the sons successively in tail,—trusts of term of* 1000 *years for A. B. and C. D. to raise by mortgage thereof* £4000 *for younger children's portions*): AND WHEREAS the said (*husband*) died on the —— day of —— without having exercised the power of appointment given to him by the said indenture of settlement as aforesaid in respect of the said sum of £4000: AND WHEREAS there are four younger children of the said marriage, and each of them has attained the age of twenty-one years, so that the said sum of £4000 is now payable to and divisible between such younger children equally: AND WHEREAS no part of the said sum of £4000 has yet been raised: AND WHEREAS the said A. B. and C. D., pursuant to the trust for this purpose contained in the said recited indenture, have applied to the said E. F. to advance to them the sum of £4000 for the purpose of satisfying the said portions which he the said E. F. has agreed to do upon having the repayment thereof, with interest, secured to him in the manner hereinafter expressed: NOW THIS INDENTURE WITNESSETH, that in consideration of the sum of £4000 paid by the said E. F. to the said A. B. and C. D. for the purpose aforesaid, on or before the execution of these presents (*the receipt, &c.*), they the said A. B. and C. D., as trustees, in execution of the trust for this purpose reposed in them by the said indenture, hereby assign unto the said E. F., ALL, &c. (*parcels*): TO HOLD the same unto the said E. F., for all the residue now unexpired of the said term of 1000 years, created by the said recited indenture of the —— day of ——: PROVIDED ALWAYS, that if the person or persons for the time being entitled to the premises hereby assigned in remainder immediately expectant

MORTGAGE FOR TERM TO SECURE YOUNGER CHILDREN'S PORTIONS.

Death of husband without having executed power.

That there are four younger children who have attained vested interests in their portions.

Agreement to mortgage to raise same.

Witnessing part.

Trustees assign parcels

to mortgagee for residue of term.

Subject to proviso for redemption.

younger children, it is desirable, as a general rule, to make the portionists parties; but if the trusts are in the usual form, their concurrence is not absolutely essential, and therefore where it cannot conveniently be obtained, it may be, and often is, dispensed with.

Where the tenant of the freehold is *sui juris*, he generally consents to join in the mortgage, and to covenant either for payment of the principal and interest, or of the interest only, by way of collateral security; but if he is a minor, or refuses to join, the mortgagee must remain satisfied with the security of the land.

MORTGAGE FOR TERM TO SECURE YOUNGER CHILDREN'S PORTIONS.

on the said term of 1000 years, shall on the —— day of —— next, pay to the said E. F., the sum of £4000, with interest for the same after the rate of £—— per cent. per annum, computed from the date of these presents, then and in such case the assignment hereby made shall be void.

IN WITNESS, &c.

No. XLIX.

TO RAISE PORTIONS WITH CONCURRENCE OF TENANT FOR LIFE, &C.

MORTGAGE *by* TRUSTEES *of a* TERM *for* RAISING PORTIONS *with the* CONCURRENCE *of the* PORTIONISTS, *and also of the* TENANT FOR LIFE, *under a re-settlement of the estates, who* COVENANTS *to* KEEP DOWN *the interest.*

Parties. THIS INDENTURE, made the —— day of ——, BETWEEN A. B., of, &c., and C. D., of, &c. (*trustees of term*), of the first part, E. F., of, &c. (*tenant for life*), of the second part, G. H., of, &c., I.K., of, &c., and L. M., of, &c. (*portionists*), of the third

Recitals. part, and N. O., of, &c. (*mortgagee*), of the fourth part (*Recite settlement on marriage of X. Y. with Z. whereby estates were limited to use of X. Y. for life, with remainder that Z. should receive a jointure, with usual powers, with remainder to A. B. and C. D. for* 1000 *years, upon trust to raise* £10,000 *as portions for younger children, and also the costs attending the raising of the same, with remainder to use of first and other sons of X. Y. and Z. in tail male—that there were issue of said marriage E. F., the eldest son, and G. H., I. K., and L. M., younger children—that E. F. attained twenty-one, and re-settlement of estates, whereby E. F.'s estate tail is cut down to an estate for life, with remainders over:—death of X. Y.—that G. H., I. K., and L. M. attained twenty-one in lifetime of X. Y.*): AND WHEREAS the said G. H., I. K., and L. M., having

required the said A. B. and C. D. to raise and pay to them the sum of £10,000 by the said indenture of the —— day of —— directed to be raised for the portions of younger children as aforesaid, the said A. B. and C. D. have applied to the said N. O. to advance the said sum of £10,000 for the purpose aforesaid, and also the further sum of £—— for the purpose of paying the costs and expenses of, and incidental to, the raising of the said portions, which the said N. O. has agreed to do, upon having the repayment of the said several sums of £10,000 and £——, making together the sum of £——, with interest for the same, secured by an assignment, by way of mortgage, of the hereditaments comprised in the said term of 1000 years, and upon having the interest thereon further secured by the covenant of the said E. F. in the manner hereinafter expressed: NOW THIS INDENTURE WITNESSETH, that in consideration of the sum of £——, paid by the said N. O. to the said A. B. and C. D. for the purposes aforesaid, on or before the execution of these presents, with the consent and approbation of the said G. H., I. K., and L. M. (*the receipt, &c.*), they the said A. B. and C. D., as trustees, in execution of the trust for this purpose reposed in them by the said recited indenture of the —— day of —— as aforesaid, hereby assign, and the said E. F., as beneficial owner, hereby confirms unto the said N. O., ALL, &c. (*parcels*): TO HOLD the same unto the said N. O., for all the residue now unexpired of the said term of 1000 years granted by the said indenture of the —— day of ——, as hereinbefore is mentioned, without impeachment of waste, subject to the annual sum or yearly rent-charge of £——, by the same indenture limited to the said Z. during her life as aforesaid, and the powers and remedies for enforcing payment thereof: PROVIDED ALWAYS that if the said E. F., or other the person or persons for the time being entitled to the hereditaments and premises hereby assigned in remainder immediately expectant on the said term, shall on the —— day of —— next, pay to the said N. O., the sum of £——, with interest for the same after the rate of £—— per cent. per annum, computed from the date of these presents, then and in such case the assignment hereby made shall be void: AND THE SAID E. F. hereby covenants with the said N. O., that he the said E. F. will during his life pay the interest to accrue due on the said principal sum of £——,

TO RAISE PORTIONS WITH CONCURRENCE OF TENANT FOR LIFE, &c.

Agreement for loan.

Witnessing part. Consideration.

Trustees of term assign and tenant for life confirms to mortgagee for residue of term.

Proviso for redemption.

Covenant by tenant for life to

TO RAISE PORTIONS WITH CONCURRENCE OF TENANT FOR LIFE, &c.

or on so much thereof as shall for the time being remain owing on the security of these presents, by equal half-yearly payments on the —— day of ——, and the —— day of —— in every year.

keep down the interest.

In witness, &c.

No. L.

TO RAISE PART OF PORTION UNDER POWER OF ADVANCEMENT.

MORTGAGE *by* Trustees *of a* Term, *with the concurrence of the* Tenant for Life, *for the purpose of* raising *a* part *of the* Expectant Portion *of a* Younger Son, *for his* Advancement.

Parties.

THIS INDENTURE, made the —— day of ——, Between A. B. of, &c., and C. D. of, &c. (*trustees of the term*), of the first part, E. F. of, &c. (*tenant for life*), of the second part, and G. H. of, &c. (*mortgagee*), of the third part: Whereas by an indenture, &c., the manor and other hereditaments therein particularly described (of which the hereditaments intended to be hereby demised form part) were limited and assured from and after the solemnization of the said then intended marriage, To the use of the said E. F. and his assigns during his life, without impeachment of waste, with remainder (subject to a yearly rent-charge limited to the said —— which has determined by her death) to the use of the said A. B. and C. D., their executors, administrators, and assigns, for the term of 1000 years, computed from the day of the decease of the said E. F., without impeachment of waste, upon trust that if, &c. (*trusts for raising portions for younger children after the decease of E. F., or during his life, with his consent in writing, and power to trustees with consent of E. F. to raise a moiety of the expectant portion of any child for his advancement*): And whereas the said ——, the wife of the said E. F., died on the —— day of ——, And whereas there are issue of the said E. F. by the said ——, his late wife, L. F., their eldest son and three younger sons, and two daughters,

Recite settlement.

Death of settlor's wife.

Issue of marriage.

all of whom are under the age of twenty-one years: AND WHEREAS M. F. is one of such younger sons, and he is now of the age of eighteen years, or thereabouts: AND WHEREAS the said E. F. is desirous of purchasing a commission in the army for the said M. F., and hath requested the said A. B. and C. D. to raise, under the trusts of the said term of 1000 years, the sum of £——, to be applied in the purchase of such commission, and for the outfit of the said M. F., or otherwise for his advancement and benefit: AND WHEREAS the said G. H. has agreed to advance to the said A. B. and C. D. the sum of £—— for the purpose aforesaid, upon having the payment thereof, with interest, secured to him in the manner hereinafter expressed: NOW THIS INDENTURE WITNESSETH, that in consideration of the sum of £——, paid by the said G. H. to the said A. B. and C. D. on or before the execution of these presents, by the direction of the said E. F., and which sum of £—— is intended to be applied by the said A. B. and C. D. for the advancement of the said M. F. in manner aforesaid (*the receipt, &c.*), they the said A. B. and C. D. as trustees hereby demise unto the said G. H., ALL, &c. (*parcels*): TO HOLD the same unto the said G. H., for the said term of 1000 years, computed from the day of the decease of the said E. F., and so as aforesaid created by the said recited indenture of the —— day of ——, except the last ten days of the said term, without impeachment of waste: AND THIS INDENTURE ALSO WITNESSETH, that for the consideration aforesaid, the said E. F. as beneficial owner doth hereby demise unto the said G. H., THE SAID PIECES or parcels of land, and other the hereditaments hereinbefore described and expressed to be demised for the said term of 1000 years except the last ten days of the said term as aforesaid: TO HOLD the same unto the said G. H., for the term of ninety-nine years, computed from the day of the date of these presents, if the said E. F. shall so long live, without impeachment of waste: PROVIDED ALWAYS, that if the said E. F., or other the person or persons for the time being entitled to the hereditaments and premises hereby demised, in remainder expectant on the said term of 1000 years, shall, on the —— day of —— next, pay to the said G. H., the sum of £——, with interest for the same after the rate of £—— per cent. per

TO RAISE PART OF PORTION UNDER POWER OF ADVANCEMENT.

That tenant for life is desirous to purchase commission for younger son.

Agreement to advance money.

Witnessing part.

Consideration.

Trustees demise to mortgagee for 1000 years, wanting ten days.

Second witnessing part.

Tenant for life demises to mortgagee for 99 years, if he should so long live.

Proviso for redemption.

TO RAISE PART OF PORTION UNDER POWER OF ADVANCEMENT.

annum, computed from the date of these presents, then and in such case these presents and the several demises hereby made shall cease, and be void (*Covenant by E. F. to pay principal and interest, suprà*, p. 515): PROVIDED ALWAYS, and it is hereby declared, that as between the said E. F. on the one hand, and the hereditaments and premises hereby demised on the other hand, the said E. F., and his estate and effects, shall be liable during his life to keep down the interest on the said principal sum of £——, in exoneration of the said hereditaments and premises, and the said hereditaments shall be charged with, and liable to, the payment of the said principal sum of £——, in exoneration of the said E. F. and his estate and effects: but this present proviso shall not in anywise affect the said G. H., or his right to resort to his several securities in such order and manner as he or they shall think fit.

Covenant by tenant for life to pay principal and interest.

Declaration as to order of liability.

IN WITNESS, &c.

No. LI.

MORTGAGE BY A BUILDER OF UNFINISHED HOUSES.

MORTGAGE *by* ASSIGNMENT *of* PREMISES *comprised in a* BUILDING LEASE *to secure the repayment of* SUMS *advanced and to be advanced to the* LESSEE *for the purpose of enabling him to complete* SEVERAL HOUSES *which are unfinished.*

Parties.

THIS INDENTURE, made the —— day of ——, BETWEEN A. B. of, &c. (*mortgagor*), of the one part, and C. D. of, &c. (*mortgagee*), of the other part (*Recite building lease to A. B.*): AND WHEREAS pursuant to the covenant for this purpose contained in the said recited indenture of lease, the said A. B. hath already laid out and expended the sum of £—— in erecting buildings on the said piece or parcel of ground in the said indenture comprised: AND WHEREAS the said A. B., having occasion for the sum of £—— for the purpose of enabling him to complete the erections and buildings intended to be erected on

Recite sum already expended by mortgagor in building.

MORTGAGE BY A BUILDER OF UNFINISHED HOUSES.

the said piece or parcel of ground pursuant to the aforesaid covenant as aforesaid, hath applied to and requested the said C. D. to lend him the same, which he the said C. D. hath agreed to do in two separate sums, that is to say, the sum of £—— immediately before the execution of these presents, and the sum of £——, being the remainder of the said sum of £——, when and so soon as all the erections and buildings already built, and to be erected and built, pursuant to the aforesaid covenant of the said A. B. as aforesaid shall have been covered in, on having the said several sums of £—— and £——, with interest thereon respectively, secured in manner hereinafter expressed: NOW THIS INDENTURE WITNESSETH, that in consideration of the sum of £—— to the said A. B. paid by the said C. D. on or before the execution of these presents (*the receipt, &c.*), and in consideration of the covenant hereinafter contained on the part of the said C. D., the said A. B. hereby covenants with the said C. D. to pay to him, on the —— day of —— next, the sum of £——, with interest thereon after the rate of £—— per cent. per annum, computed from the date of these presents: AND ALSO to repay to him the money which shall be hereafter advanced by him to the said A. B. pursuant to the covenant in that behalf hereinafter contained on the —— day of —— or the —— day of ——, which shall first happen after the date of the said advance, with interest thereon after the rate aforesaid, computed from the date of the said advance: AND ALSO if and so long as any principal money shall remain unpaid after the day hereby appointed for payment thereof, to pay interest thereon by equal half-yearly payments on the —— day of —— and the —— day of ——; AND THIS INDENTURE ALSO WITNESSETH, that for the consideration aforesaid, the said A. B., as beneficial owner, hereby assigns unto the said C. D. ALL AND SINGULAR the piece or parcel of ground, hereditaments, and premises comprised in and demised by the said recited indenture of lease, and also all erections and buildings which have been erected and are now standing on the said premises: TO HOLD the same unto the said C. D. for all the residue now unexpired of the said term of ninety-nine years created by the said recited indenture of lease: PROVIDED ALWAYS, that if the principal sums hereinbefore covenanted to be paid shall be paid at the times hereinbefore appointed

Occasion on which further sum will be advanced by mortgagee.

Covenant by mortgagor to repay sum now advanced, and further sum when advanced.

and to pay interest half yearly.

Assignment of premises

to mortgagee for residue of term.

MORTGAGE BY A BUILDER OF UNFINISHED HOUSES.

for payment thereof, then and in such case the said premises shall, at the request and cost of the said A. B., his executors, administrators, or assigns, be re-assigned to him or them; AND THE SAID A. B. hereby covenants with the said C. D., that he the said A. B. will, before the —— day of ——, fully and completely finish the erections and buildings hereby assigned, and all other the erections and buildings which are to be erected and built on the said piece of ground pursuant to the covenant for this purpose entered into by the said A. B. by the said recited indenture of lease as therein mentioned, and that in case default in this respect shall be made by the said A. B., then it shall be lawful for the said C. D., his executors, administrators, or assigns, to enter upon and into the said premises hereby assigned, and to complete the same erections and buildings, and any other erections and buildings which ought to be built on the said piece or parcel of ground pursuant to the aforesaid covenant, in such manner as he or they may think proper, and that all sums of money which he or they shall expend thereon, with interest thereon after the rate aforesaid from the time or respective times of expending the same, shall be repaid to him or them on demand by the said A. B., and shall in the meantime be charged on the premises hereby assigned, in addition to the other moneys hereby secured (*Covenant to insure against fire, suprà*, p. 526): AND THE SAID C. D. hereby covenants with the said A. B. that when and so soon as all the erections and buildings already erected and to be erected pursuant to the covenant for that purpose contained in the said recited indenture of lease shall be covered in, and if up to that time all the covenants hereinbefore contained on the part of the said A. B. (other than the covenant for payment of the said principal sum of £—— on the —— day of —— next) shall have been duly kept and performed, he the said C. D. will advance to the said A. B. the further sum of £——, at interest after the rate aforesaid, on the security of these presents. (*Declaration as to leasing power if desired, suprà*, p. 516.)

Proviso for redemption.

Covenant by mortgagor to complete buildings

and that if default is made by him, mortgagee may finish them.

Premises in such case to be a security for moneys expended by mortgagee, as well as other moneys.

Covenant by mortgagee to advance further sum on buildings being covered in.

IN WITNESS, &c.

No. LII.

MORTGAGE *by a* BUILDER *of* LAND *comprised in an* AGREEMENT *entitling him to* SEPARATE LEASES *from the* FREEHOLDER *as the houses are completed, to secure* ADVANCES *to be made for the purpose of enabling him to complete the houses.*

BY A BUILDER OF LAND COMPRISED IN AGREEMENT.

THIS INDENTURE, made the —— day of ——, BETWEEN A. B. of, &c. (*mortgagor*), of the one part, and C. D. of, &c. (*mortgagee*), of the other part: WHEREAS (*Recite agreement between freeholder and builder, whereby builder agrees to build houses on a plot of land and freeholder agrees to grant a separate lease of each house when completed*): AND WHEREAS the said C. D. has agreed to make advances of money to the said A. B. from time to time in order to enable him to complete the houses and buildings on the said plot of land pursuant to the said recited agreement, upon having the repayment thereof with interest secured in the manner hereinafter expressed: NOW THIS INDENTURE WITNESSETH, as follows:—

Parties.

Agreement for loan.

1. THE said C. D. (hereinafter called "the mortgagee,") hereby covenants with the said A. B. (hereinafter called "the mortgagor"), that he the mortgagee will advance and lend to the mortgagor such sums of money as are next hereinafter mentioned (that is to say) the sum of £—— immediately on the execution of these presents, and for and in respect of each house built by the mortgagor on the plot of land comprised in the said recited agreement pursuant to the same agreement, the further sum of £——, one moiety thereof to be advanced and lent as and when each such house shall be covered in, and the other moiety thereof as and when the same house shall be completed, so as to be fit for habitation: PROVIDED ALWAYS that the mortgagee shall not be bound to make any such advance as aforesaid, unless and until his surveyor shall have certified in writing that the house in respect of which the advance is to be made has been covered in or completed (as the case may be) to the satisfaction of such surveyor and in conformity with the said recited agreement, and the fee of the surveyor for inspecting

Mortgagee covenants to make advances as each house is covered in and completed.

Proviso that mortgagee need not make advance until surveyor has certified that house has been properly built, &c.

BY A BUILDER OF LAND COMPRISED IN AGREEMENT.

the house and certifying as aforesaid (not exceeding in amount £——) shall be paid by the mortgagor: PROVIDED ALSO that the mortgagee shall not be bound to make any such advance as aforesaid, unless up to the time when such advance ought to be made under the foregoing covenant the mortgagor shall have duly paid the interest on the principal money for the time being owing on this security on the half-yearly day hereinafter appointed for payment of such interest, or within fourteen days thereafter, and shall have duly observed all the covenants hereinafter, on the mortgagor's part, contained (other than the covenant contained in Article 2).

nor unless mortgagor has paid interest punctually and observed his covenants.

Mortgagor covenants to repay advances at the end of six months,

2. IN consideration of the advances to be made as aforesaid, the mortgagor hereby covenants with the mortgagee that he the mortgagor will repay to the mortgagee every sum of money advanced by him pursuant to Article 1 at the expiration of six calendar months from the time of such advance, with interest thereon computed from the time of such advance, after the rate of £—— per cent. per annum; and if the same shall not be repaid at the expiration of the said six calendar months will thenceforth pay to the mortgagee interest thereon after the rate aforesaid by equal half-yearly payments on the —— day of ——, and the —— day of —— in every year, until the said principal sum shall be fully repaid.

and to pay interest half-yearly.

Mortgagor assigns plot of land to mortgagee subject to proviso for redemption on payment of principal money and interest.

3. THE mortgagor, as beneficial owner, hereby assigns unto the mortgagee THE plot of ground comprised in the said recited agreement, and the benefit of the said agreement in relation thereto, TO HOLD the same unto the mortgagee: PROVIDED ALWAYS that the mortgagor shall, at his own expense, have a reassignment of the said premises, if he shall pay all moneys advanced to him by the mortgagee with interest thereon at the expiration of six calendar months from the times when the same shall be advanced pursuant to Article 2.

Covenant by mortgagor to insure against fire,

4. THE mortgagor hereby covenants with the mortgagee that he the mortgagor will keep insured the buildings for the time being on the said plot of land in a sum equal to two-thirds of the value thereof: AND will deliver to the mortgagee the receipt for every premium payable in respect of such insurance within seven days after it shall become due: AND if the mortgagor shall fail to keep the said buildings insured as aforesaid, then the mortgagee may insure the same in such sum as he may

and deliver receipts for premiums to mortgagee.

Power to mortgagee to insure in case of

BY A BUILDER OF LAND COMPRISED IN AGREEMENT.

think fit, and all moneys expended by him in or about such insurance, with interest thereon after the rate aforesaid, computed from the time of expending the same, shall be repaid to the mortgagee by the mortgagor on demand, and shall in the meantime be a charge on the said premises in addition to the other moneys hereby secured: And all moneys received in respect of any such insurance shall be applied in rebuilding or reinstating the premises in respect whereof the same shall be received.

mortgagor's default, and to add expense of so doing to the mortgage debt.

5. The mortgagor hereby further covenants with the mortgagee that he the mortgagor will erect and complete the —— houses by the said recited agreement agreed to be built by him on the said plot of ground at the times and in the manner mentioned in that behalf in the said agreement, and will pay the rent made payable by the said agreement, and observe and perform the said agreement in all respects.

Mortgagor covenants to build according to agreement, and to observe agreement.

6. If the mortgagor shall make default in the repayment of any principal money hereby secured for the space of one calendar month after payment thereof shall have been demanded, or shall make default in any half-yearly payment of interest payable under these presents, or any part thereof, for the space of fourteen days after the day hereby appointed for such payment, or shall commit any breach of any of the covenants herein on his part contained (other than the covenant contained in Article 2), or shall become bankrupt or die during the continuance of this security, then and in any of such cases the mortgagee may at any time thereafter enter into and upon and take possession of the plot of land hereby assigned, and complete any houses or buildings thereon which may be unfinished in such manner as he may think fit, and add the money expended in so doing with interest thereon after the rate aforesaid, computed from the time of expending the same, to the other principal moneys and interest hereby secured, so as to be an additional charge on the said premises, and the mortgagee may also seize and take possession of any tools, materials, and other chattels and things belonging to the mortgagor which shall then be in and upon the said plot of land, and either use the same in or about the completion of the said buildings or sell the same: And the mortgagee may also sell the said plot of ground and the houses and buildings thereon, or any part thereof, either together or in lots, and so that every such sale may be either by public

Power to mortgagee in certain cases to enter and complete buildings,

to seize materials, &c.,

and to sell.

BY A BUILDER OF LAND COMPRISED IN AGREEMENT.

auction or private contract, and the mortgagee may buy in at sales by auction and rescind contracts for sale and resell without being answerable for any loss arising thereby, and may execute assurances, give valid receipts for the purchase-money, and do all other acts and things which he may think fit for carrying into effect and completing any such sale: And the mortgagee shall, with and out of the moneys to arise from any such sale, in the first place pay the costs and expenses incurred in or about such sale or otherwise in relation to this security, and in the next place pay the moneys then owing on this security, and pay the surplus (if any) to the mortgagor.

Purchaser not bound to inquire whether any case authorising a sale has happened.

7. No purchaser upon any such sale as aforesaid shall be bound or concerned to see whether any of the cases have happened in which such sale is hereby authorised to be made or otherwise as to the propriety of such sale, or be affected by notice that no such case has happened or that the sale is otherwise improper.

How demand may be made.

8. Any demand for payment of the money hereby secured may be made by a notice in writing given to the mortgagor or to one of his executors or administrators, or left at his usual or last known place of abode or business, or left upon or affixed to any part of the land comprised in the said agreement, or any building thereon.

Mortgagor covenants to procure leases from freeholder, and to execute mortgages to mortgagee of premises comprised in leases.

9. The mortgagor hereby further covenants with the mortgagee that he the mortgagor will, at his own expense, procure from the said —— (*the freeholder*), a separate lease of each of the said houses when and so soon as such lease can be required in accordance with the said recited agreement, and will procure such lease to be granted either to the mortgagor or to the mortgagee as the mortgagee may determine, and in case such lease shall be granted to the mortgagor then will forthwith make and execute to the mortgagee a valid and effectual mortgage of the premises comprised in such lease, either by way of assignment or underlease, for the purpose of securing the money which shall then be owing to the mortgagee upon this security, or such part of the said money as the mortgagee may think fit to allocate to the premises comprised in that particular lease, with interest thereon after the rate aforesaid: And every such mortgage shall contain such powers and provisions as the mortgagee shall reasonably require.

Operation

10. The expressions "the mortgagor" and "the mortgagee"

used in these presents include (besides the said A. B. and C. D.) all persons deriving title under them respectively, except where the context may require a different construction. (*Declaration as to leasing power if desired, suprà*, p. 516.)

BY A BUILDER OF LAND COMPRISED IN AGREEMENT.

of words "mortgagor" and "mortgagee."

IN WITNESS, &c.

No. LIII.

MORTGAGE *by a* BUILDER *to a* FIRM *of* SOLICITORS *to secure* BALANCE *of a* CURRENT ACCOUNT.

BY BUILDER TO SOLICITORS.

THIS INDENTURE, made the —— day of ——, BETWEEN A. B. of, &c. (hereinafter called "the mortgagor") (*mortgagor*), of the one part, and C. D. of, &c., and E. F. of, &c. (hereinafter called "the mortgagees") (*mortgagees*), of the other part: WHEREAS the mortgagees have from time to time made advances to the mortgagor for the purpose of enabling him to carry on his building operations at ——, and for other purposes, and there has been for some time past a current account between the mortgagor and the mortgagees, in which account the mortgagor is debited with moneys from time to time advanced to him as aforesaid, and with interest thereon, and is credited with moneys from time to time received by the mortgagees for rent or otherwise on his account: And there is now owing from the mortgagor to the mortgagees on the balance of such account current the sum of £——: AND WHEREAS the mortgagor has agreed to give to the mortgagees such security for the payment of the moneys now due and hereafter to become due and owing from him as hereinafter is expressed: NOW THIS INDENTURE WITNESSETH, that in pursuance of the said agreement, and in consideration of the premises, the mortgagor hereby covenants with the mortgagees, that he the mortgagor will on demand, or his heirs, executors, or administrators will within one month after his death, without any such demand, pay to the mortgagees the balance which on the account current of the mortgagor with them, shall for the time being be owing: AND IT IS HEREBY DECLARED, that any demand for

Parties.

Recital that mortgagees have made advances to mortgagor, and that there is a current account between them.

Agreement for security.

Witnessing part.

Mortgagor covenants to pay on demand balance of account current.

How de-

BY BUILDER TO SOLICITORS.

mand may be made.

How account is to be kept.

payment of the aforesaid balance may be made to the mortgagor personally or may be left at his usual or last known residence in England or Wales, or at or upon some or one of the messuages intended to be hereby demised, or some part thereof: AND IT IS HEREBY AGREED AND DECLARED, that for the purposes of these presents the account current between the parties hereto shall be kept on the footing and in the manner following, namely; on the —— day of ——, and the —— day of ——, in every year during the continuance of this security, a half-yearly account shall be stated and settled, and in each half-yearly account the mortgagor shall be debited in the first place as to the account to be stated and settled on the —— day of —— next, with the said balance of £—— now owing from him, and as to every future half-yearly account with the balance carried over from the preceding account and with interest on such present or future balance after the rate of £5 per cent. per annum: And in the next place the mortgagor shall be debited with all moneys (if any) advanced to him or on his account during the current half-year by the mortgagees, and with interest thereon from the date of each such advance after the like rate of £5 per cent. per annum: AND the mortgagor shall be credited in every such account with all sums of money which, during the current half-year, shall be received by the mortgagees from the mortgagor or on his account for rents or otherwise, and with interest thereon after the rate aforesaid, computed from the receipt thereof respectively: And the balance which on the account so stated and settled as aforesaid shall appear owing from the mortgagor on the day on which the same shall be so stated and settled, shall be carried over as the first item on the debit side in the account for the next half-year: PROVIDED ALWAYS, that if payment of the balance intended to be hereby secured shall be demanded on any day not being one of the aforesaid half-yearly days of account, then and in such case the account shall be stated and settled on the footing and in manner aforesaid up to the day on which payment shall be demanded, so as to ascertain the balance due on that day: PROVIDED ALSO, that if the mortgagor shall die during the continuance of this security, then and in such case the account shall be stated and settled on the footing and in manner aforesaid up to the expiration of one calendar month from the death of the mortgagor, so as to ascertain the

If mortgagor dies, account to be stated up to one month after his death.

balance due on that day: PROVIDED ALSO, that if default shall be made by the mortgagor, in payment of the balance intended to be hereby secured at the time by these presents, or by such demand as aforesaid appointed for the payment thereof, then and in such case the balance ascertained as aforesaid shall bear interest after the rate of £5 per cent. per annum until the actual payment thereof: AND IT IS HEREBY AGREED AND DECLARED, that the mortgagees shall be entitled to charge the mortgagor for all professional business done by them in relation to this security or to any property forming the subject of this security, or in relation to any other property, matters, or things whatsoever in like manner as if they had not been the mortgagees under these presents, but had been employed by the mortgagor to do such business as his solicitors: AND all moneys which shall from time to time become owing from the mortgagor to the mortgagees for professional charges as aforesaid, shall be carried to the debit side of the account current to be kept as aforesaid, and shall bear interest after the rate aforesaid from the time when the bill of costs shall be delivered to the mortgagor: AND THIS INDENTURE ALSO WITNESSETH, that in further pursuance of the said agreement, and in consideration of the premises, the mortgagor, as beneficial owner, doth hereby demise unto the mortgagees, ALL the messuages, lands, and hereditaments situate in the parish of ——, in the county of ——, comprised in the recited indentures of lease mentioned in the schedule hereunder written: To HOLD the same unto the mortgagees, for the residue now unexpired of the terms of years granted by the said indentures respectively, except the last day of each of the said terms: PROVIDED ALWAYS, that if all moneys hereinbefore covenanted to be paid by the mortgagor, shall be duly paid according to the covenants and provisions hereinbefore contained, then and in such case the said hereditaments and premises shall, at the request and cost of the mortgagor, be surrendered to him: AND IT IS DECLARED that where the context allows the expressions "the mortgagor" and "the mortgagees" used in these presents include besides the said A. B. and the said C. D. and E. F., all persons deriving title under them respectively. (*Declaration as to leasing power if desired, suprà*, p. 516.)

IN WITNESS, &c.

By builder to solicitors.

Balance to bear interest.

Mortgagees to be allowed to charge for professional business.

Charges to be carried to debit side, and to bear interest from delivery of bill of costs.

Second witnessing part.

Demise of leasehold houses, &c., to mortgagee subject to redemption.

Interpretation of terms "mortgagor" and "mortgagees."

THE SCHEDULE ABOVE REFERRED TO.

No. LIV.

APPOINTMENT OF RECEIVER.

APPOINTMENT *under the* STATUTORY POWER *of a* RECEIVER *of the* RENTS *of* FREEHOLD *and* LEASEHOLD PROPERTY *comprised in a* MORTGAGE.

Recital of mortgage.

WHEREAS by an indenture dated, &c., and made between X. Y. of, &c., of the one part, and me, of the other part, certain freehold and leasehold messuages, lands, and hereditaments, situate in the parish of ——, in the county of ——, therein particularly described, were conveyed and demised by the said X. Y. to me, in fee simple as to the said freeholds, and as to the said leaseholds for the unexpired residue of the term of —— years subsisting therein, except the last day thereof, by way of mortgage, for securing payment of the sum of £——, on the —— day of —— then next, with interest thereon after the rate of £—— per cent. per annum: AND WHEREAS the principal money secured by the said indenture remains owing, and the interest thereon has been in arrear for more than two months; NOW I, the undersigned A. B., in pursuance of the power for this purpose given to me by section 24 of the Conveyancing and Law of Property Act, 1881, and of all other powers (if any) me hereunto enabling do hereby appoint C. D., of, &c., to be the receiver of the rents and income of all the freehold and leasehold property comprised in the said mortgage, with all the powers conferred on a Receiver by the said Act, and to the intent that he shall apply all moneys received by him in the manner directed by sub-section 6 of section 24 of the said Act, and I authorise the said C. D. to retain for his remuneration, and in satisfaction of all costs, charges, and expenses incurred by him as Receiver, a commission of 5 per cent. on the gross amount of all money received by him, and I direct him to keep the buildings on the said premises insured against loss or damage by fire in the —— Insurance Office.

That principal money is due and interest in arrear.

Appointment of receiver.

Authority to retain commission,

and to insure buildings against fire.

AS WITNESS my hand this —— day of —— 188—.

(Signed) A. B.

No. LV.

MORTGAGE *of a* LARGE ESTATE *situate in a* MINING DISTRICT, *with* POWER *for the* MORTGAGOR *to grant* LEASES *for* TWENTY-ONE YEARS *and also* BUILDING *and* REPAIRING LEASES *for* NINETY-NINE YEARS, *and* MINING LEASES *for* SIXTY YEARS,—PROVISIONS *for setting apart a* PROPORTION *of the* RENTS *and* ROYALTIES *payable under the* MINING LEASES, *and* INVESTING *same in the* NAMES OF TRUSTEES *to constitute a* SINKING FUND *in aid of the* PRINCIPAL SECURITY.

MORTGAGE WITH AMPLE LEASING POWERS.

THIS INDENTURE, made the —— day of ——, BETWEEN A. B. of, &c. (*mortgagor*), of the first part, C. D. of, &c. (*mortgagee*), of the second part, and E. F. of, &c., and G. H. of, &c. (*trustees*), of the third part, WITNESSETH, that &c. (*Conveyance by A. B. to C. D. in fee—proviso for redemption—covenants for payment of principal and interest, as in Precedent No. I.*, p. 515): AND IT IS DECLARED, that upon any sale made by the said C. D., his executors, administrators, or assigns, under the statutory power in that behalf, the surface of any of the lands hereby conveyed may be sold without the mines thereunder, or the mines under any of the said lands may be sold without the surface of the same lands, and in either of the said cases there may be reserved to the vendor, or granted to the purchaser (as the case may require), such powers, privileges, and easements for the purpose of working the mines so reserved or conveyed, as the case may be, for getting and carrying away the produce thereof, or otherwise in connection with the mines as may be thought desirable or convenient: PROVIDED ALWAYS, and it is hereby agreed and declared, that it shall be lawful for the said A. B., his heirs or assigns, at any time or times during the life of the said A. B., or within twenty-one years after his decease, if he or they shall for the time being remain in the possession or in the receipt of the rents and profits of the said hereditaments and premises hereby conveyed to exercise all or any of the several powers, firstly, secondly, and

Parties

On sales surface of land, and mines thereunder, may be sold separately.

Declaration that mortgagor shall have following powers.

MORTGAGE WITH AMPLE LEASING POWERS.

thirdly hereinafter expressed (*a*) (that is to say): FIRST, to demise or lease any part of the said hereditaments and premises to any person or persons for any term of years not exceeding twenty-one years, to take effect in possession at the best yearly rent to be incident to the immediate reversion of the premises, that can be reasonably obtained for the same, without taking anything in the nature of a fine or premium for the making thereof, and so that there be therein contained a power of re-entry in case of non-payment of the said rent for a period to be therein in that behalf mentioned, not exceeding forty days from the time when the same shall have become due, and so that the lessee do execute a counterpart of such lease, and do thereby covenant for the due payment of the said rent, and be not made dispunishable for waste: AND SECONDLY, to demise or lease any part or parts of the said hereditaments and premises to any person or persons who shall be willing to take the same for the purpose of effectually repairing any building or buildings standing on the land thereby demised, or for the purpose of erecting on such land, or any part thereof, any new building or buildings, whether for habitation, or for a church, chapel, school, court-house, market, museum, or any other public purpose, or for coal, iron, or other works, or for manufacturing purposes, or for shops, with or without liberty to the lessee to pull down any erections or buildings standing upon such land, or any part thereof, and to sell or make use of the materials for the purpose of such new building or buildings, and also with or without liberty for the lessee to lay out, use, and appropriate, any part or parts of the land demised or leased as aforesaid, as or for yards, gardens, drains, water-courses, ponds, or other conveniences to be held, occupied, or enjoyed with any such building or buildings, and either with or without any rights of way or water-course, or other easements or rights, convenient for the enjoyment of the demised premises, over any other part of the hereditaments and premises hereby assured, or expressed so to be, But so nevertheless that every lease granted under this present power shall be for a term of years not exceeding ninety-nine years, and shall take effect in possession, and so that in every such lease there shall be reserved the

1. Power to lease for twenty-one years;

2. Power to grant building and repairing leases for ninety-nine years;

(*a*) The powers firstly and secondly conferred might be omitted, as they are in substance given by the Conveyancing and Law of Property Act, 1881.

MORTGAGE WITH AMPLE LEASING POWERS.

best yearly rent, to be incident to the immediate reversion of the premises, which can be reasonably gotten under the circumstances of the case, without taking anything in the nature of a fine or premium for the making thereof, reserving, however, in such lease, if it shall be thought desirable so to do, a small or nominal rent during all or any of the first three years of the term thereby created, and so that in every such lease there be contained a power of re-entry in case of the non-payment of the said rent for a period to be therein in that behalf mentioned (not exceeding forty days from the time when the same shall have become due), and so that the lessee do execute a counterpart thereof, and do thereby covenant to pay the said rent, and also to keep all the buildings which shall be covenanted to be so repaired or erected, in substantial repair and condition, and also to insure and keep insured the same buildings against loss or damage by fire, in a sum equal to two-thirds at least of their actual value for the time being, and do enter into any other covenants not repugnant to the provisions hereinbefore expressed which the said A. B., his heirs or assigns, shall think proper and reasonable: AND THIRDLY, to demise or lease to any person or persons all or any of the mines, quarries, beds, and strata of coal, ironstone, fire-clay, common clay, stones, and other minerals, metals, and substances whatsoever lying within, under, or upon, or otherwise forming part of the hereditaments hereby conveyed, and either with or without any houses or lands convenient to be held or occupied with the same, and either with or without the surface of any lands under which the same or any part thereof shall lie, and with such liberties, powers, and privileges of working and getting the said mines and premises, and of stacking and depositing, leading and carrying away the produce thereof, and of converting such produce into coke, bricks, or other articles or things, and of sinking, driving, erecting, constructing, and using pits, shafts, levels, drifts, airgates, watergates, furnaces, engines, machinery, houses for workmen, and other houses, buildings, sheds, canals, wharves, railways, waggon ways, and other ways, works, devices, and conveniences, and with all such other easements, rights, and privileges to be exercised in, over, upon, or under the hereditaments hereby conveyed or any part thereof, in connection with the mines and premises to be included in such lease as the person or

3. To grant mining leases, with powers ancillary thereto for sixty years.

MORTGAGE WITH AMPLE LEASING POWERS.

persons for the time being exercising this power shall think fit; But so that every lease under this power shall be for a term not exceeding sixty years to take effect in possession, or within one year from the making thereof, and shall be at the best rent or rents, royalty, or royalties, that can be reasonably obtained for the same, without taking anything in the nature of a fine or premium for the making thereof, and so also that every such lease shall contain a covenant by the lessee to pay the rents or royalties thereby reserved, and also a condition of re-entry on non-payment thereof, and so also that a counterpart of such lease be executed by the lessee: Provided also, and it is hereby declared, that with a view to enable the said A. B., his heirs or assigns, to grant leases under the said statutory powers and under the power hereinbefore contained, it shall be lawful for him or them, from time to time, to obtain the surrender or assignment of any lease now existing, or which may be hereafter created, either as to the whole or any part of the land comprised in the same lease: Provided always, and it is hereby agreed and declared, and in particular the said A. B. hereby covenants with the said C. D. that within one calendar month after the execution by the lessee of the counterpart of every or any lease which may be granted under any of the powers in that behalf hereinbefore contained, every such counterpart shall be delivered to the solicitor or solicitors, or other person or persons who shall from time to time be appointed to take charge of the same by the said C. D., his executors, administrators, or assigns, And that upon the delivery of every such counterpart of a lease granted under either of the powers firstly and secondly hereinbefore contained, the sum of one guinea shall be paid by the said A. B., his heirs, or assigns, to the solicitor or solicitors, or other person or persons appointed as aforesaid, as a fee for his or their trouble, in or about the accepting of the said counterparts, and giving such receipt or acknowledgment for the same as next hereinafter is mentioned, and the said solicitor or solicitors, or other person or persons to whom such counterpart shall be delivered as aforesaid, shall upon the request of the person or persons delivering the same, and paying the said fee of one guinea as aforesaid, give to him or them a receipt or acknowledgment in writing of such delivery, which receipt or acknowledgment shall be sufficient evidence of the due delivery of

Power to mortgagor to accept surrenders of leases.

Covenants by mortgagor to deliver counterparts of leases to mortgagee's solicitor,

and pay a fee upon such delivery.

every or any counterpart therein expressed to have been so delivered: AND ALSO that no lease under the power of leasing thirdly hereinbefore contained, shall be granted unless the same shall have been first perused and approved of by the said C. D., his executors, administrators, or assigns, or his or their solicitor or solicitors, and that the costs and expenses of, and incident to such perusal and approval, shall be paid by the said A. B., his heirs or assigns, as between solicitor and client: PROVIDED ALWAYS, and it is hereby agreed and declared, that any lessee taking a lease purporting to be made in exercise of the power hereinbefore contained, shall not be bound or concerned to see or inquire whether the said lease has been perused and approved of as last aforesaid, but every such lease shall, so far as regards the lessee, be good and effectual, notwithstanding that the same may not have been so perused or approved as aforesaid: AND THE SAID A. B. hereby covenants with the said C. D., and also by way of separate covenant with the said E. F. and G. H., THAT whilst and so long as the rent or rents, royalties, tolls, and other payments reserved and made payable by any lease which shall have been granted under the said power of leasing thirdly hereinbefore contained shall be received by the said A. B., his heirs or assigns, he the said A. B., his heirs or assigns, shall and will, immediately upon every receipt of the same rent or rents, royalties, tolls, or other payments respectively, pay one full third part thereof to the said E. F. and G. H., or other the trustees or trustee who may for the time being have been appointed for this purpose, under the power in that behalf hereinafter contained, upon the trusts hereinafter declared concerning the same: AND IN ORDER to enable the said trustees or trustee for the time being to ascertain from time to time the amount payable to them or him under the covenant lastly hereinbefore contained, he the said A. B., his heirs or assigns, will at all times make and deliver, or cause to be made and delivered to them or him, true and correct statements and accounts of the rents, royalties, tolls, and other payments which shall from time to time become payable under the reservation of every or any such lease as aforesaid: AND IT IS HEREBY AGREED AND DECLARED, that the said E. F. and G. H., their executors, administrators, and assigns, or other the said trustees or trustee for the time being as aforesaid, shall stand possessed of all the sums of

MORTGAGE WITH AMPLE LEASING POWERS.

Mining leases to be perused on behalf of mortgagee.

Covenant by mortgagor to pay one-third of rents, &c., received on mining leases to trustees.

and to make and deliver statement and accounts of such rents.

Trustees to stand possessed of moneys paid to them in respect of rents, &c.

MORTGAGE WITH AMPLE LEASING POWERS.

money which shall become payable to them or him under the covenant in that behalf hereinbefore contained, upon the trusts following (that is to say), Upon trust that they the said trustees and the survivor of them, and the executors or administrators of such survivor, shall in the first place out of the said moneys pay all the costs and expenses incurred by them or him, or by the said C. D., his heirs, executors, administrators, and assigns, in or about the obtaining payment and receiving of the said moneys, or otherwise in relation to the premises, and shall from time to time, so long as any money shall remain due upon the security intended to be hereby made, invest the residue of the said trust moneys in the names or name of the said trustees or trustee in or upon any of the public stocks or funds, or government securities of the United Kingdom, or any stock or security of the government of India, or in the stock of the Bank of England, commonly called Bank Stock, or upon mortgage of hereditaments in England or Wales (but not elsewhere), being freehold or copyhold of inheritance, or leasehold for a term whereof at least sixty years shall be unexpired at the time of the investment (with liberty in the case of leasehold investments to waive the production of the lessor's title), or in or upon the stocks, shares, or securities of any railway or other company in Great Britain or India incorporated by Act of Parliament or Royal Charter, with power from time to time to vary the said investments into or for others of the same or a like nature, but so that every such variation of investment be made with the consent of the said A. B., his executors, administrators, or assigns, and shall from time to time receive the annual income of the said trust fund, and invest the same in or upon such stocks, funds, shares, or securities as aforesaid, with a like power of varying the same, and shall from time to time repeat such investment, so that all the resulting income thereof might accumulate at compound interest so long as any money should remain due as aforesaid: AND UPON TRUST that in case default shall be made in payment of any principal money or interest hereby secured, at the respective times when the same respectively ought to be paid according to the true intent and meaning of these presents, then and in such case the said trustees or trustee shall upon the request of the said C. D., his executors, administrators, or assigns (but not otherwise), call in or sell and

Upon trust after paying expenses to invest same and accumulate at compound interest,

and if default is made in payment of principal or interest, then at request of mortgagee to apply trust fund towards satisfaction thereof,

MORTGAGE WITH AMPLE LEASING POWERS.

dispose of all or any part of the said trust moneys, or the stocks, funds, shares, or securities in or upon which the same shall for the time being be invested, and shall pay and apply the moneys arising therefrom, and also the dividends or income (if any) which may then be due in respect thereof, or may have been received but not yet invested, in the first place in payment of the costs and expenses attending such calling in, sale, or disposition, or otherwise incurred in relation to the premises, and in the next place in or towards satisfaction and discharge of the principal sum and interest then due and owing upon the security of these presents: AND IT IS HEREBY AGREED AND DECLARED, that subject to the trusts aforesaid, the said trustees or trustee for the time being shall stand possessed of the trust fund to be so formed as aforesaid, and the stocks, funds, shares, and securities for the time being representing the same, in trust for the said A. B., his executors, administrators, and assigns: AND it is hereby declared, that the power of appointing a new trustee in the place of the said E. F., or any trustee appointed in his place, shall be vested in the said A. B., his heirs or assigns, and the power of appointing a new trustee in the place of the said G. H., or any trustee appointed in his place, shall be vested in the said C. D., his executors, administrators, or assigns: AND IT IS ALSO HEREBY DECLARED, that the said E. F. and G. H., and every future trustee who may be a solicitor, shall be entitled to be paid for all professional business done by them respectively in relation to the said trust funds and premises, in the same manner as if they respectively had not been trustees hereof. (*Declaration as to leasing power, suprà*, p. 516.)

and subject thereto in trust for mortgagor.

Power to appoint new trustees.

Trustees to be entitled to charge for professional business.

IN WITNESS, &c.

No. LVI.

OF FREEHOLDS, AS COLLATERAL SECURITY.

CONVEYANCE *of* FREEHOLD LANDS *by way of* COLLATERAL SECURITY (*a*).

Parties. THIS INDENTURE, made the —— day of ——, BETWEEN A. B. of, &c. (*mortgagor*), of the one part, and C. D. of, &c. (*mortgagee*), of the other part: WHEREAS by an indenture

Recite principal mortgage deed, &c. bearing even date with, and made between the same persons as are made parties to these presents, in consideration of the sum of £5000 paid by the said C. D. to the said A. B., the said A. B. has conveyed certain hereditaments situate in the parish of —— in the county of ——, therein particularly described, unto and to the use of the said C. D. in fee simple, by way of mortgage for securing the payment to him of the sum of £5000, with interest for the same after the rate of £5 per cent. per annum,

Agreement for further security. on the —— day of —— next: AND WHEREAS upon the treaty for the said loan of £5000, it was agreed that the repayment thereof, with interest, should be secured as well by the said recited indenture of mortgage as by a mortgage of the hereditaments hereinafter described in the manner hereinafter expressed: NOW THIS

Witnessing part. INDENTURE WITNESSETH, that in consideration of the sum of £5000 so paid by the said C. D. to the said A. B. as aforesaid (the receipt whereof the said A. B. hereby acknowledges),

Mortgagor conveys to mortgagee in fee. the said A. B., as beneficial owner, hereby conveys, &c. (*Conveyance of parcels to mortgagee in fee, suprà*, p. 515.) Subject to the proviso for redemption following (namely):

Proviso for redemption. PROVIDED ALWAYS, that if the said A. B., shall, on the —— day of —— next, pay to the said C. D. the said sum of £5000 with interest for the same after the rate aforesaid, computed from the date of these presents, the said premises hereby

(*a*) It is sometimes desirable to keep the titles to two estates to be included in the same security distinct by having two separate deeds. The above precedent is adapted to such a case. The *ad valorem* stamp will be imposed on the principal mortgage deed; and this deed of collateral security will require only a stamp of 6*d.* for every £100 of the £5000 secured.

conveyed, shall, at the request and cost of the said A. B., his heirs or assigns, be re-conveyed to him or them. (*Declaration as to leasing power, if desired, suprà*, p. 516.) OF FREEHOLDS, AS COLLATERAL SECURITY.

IN WITNESS, &c.

No. LVII.

CONVEYANCE *of* FREEHOLD LANDS *by way of* ADDITIONAL SECURITY—*by* INDORSEMENT *on the* PRINCIPAL MORTGAGE DEED (*a*). OF FREEHOLDS, AS ADDITIONAL SECURITY BY INDORSEMENT.

THIS INDENTURE, made the —— day of ——, BETWEEN the within-named A. B. (*mortgagor*), of the one part, and the within-named C. D. (*mortgagee*), of the other part: WHEREAS the within-mentioned sum of £5000 remains due and owing on the security of the within-written indenture: AND WHEREAS the said A. B. has agreed to convey the hereditaments hereinafter described unto the said C. D., by way of further security for the said principal sum and the interest for the same in the manner hereinafter expressed: NOW THIS INDENTURE WITNESSETH, that in consideration of the sum of £5000 so remaining owing as aforesaid, the said A. B., as beneficial owner, hereby conveys unto the said C. D., ALL, &c. (*parcels*): TO HOLD the same unto and to the use of the said C. D., in fee simple, subject to such right or equity of redemption as the hereditaments comprised in the within-written indenture are now subject or liable to under the same indenture, and so that all the powers and provisions contained in the within-written indenture shall extend and be applicable to the hereditaments and premises hereby conveyed, in the same manner as if the said hereditaments and premises had been included in the said indenture. (*Declaration as to leasing power, if desired, suprà*, p. 516.)

Parties.

Recite that mortgage money remains due.

Agreement for further security.

Witnessing part.

Mortgagor conveys further property to mortgagee, subject to right of redemption.

IN WITNESS, &c.

(*a*) In this case the principal mortgage is supposed to have been made by a deed dated some time previously to the date of the additional security.

No. LVIII.

OF POLICY, AS ADDITIONAL SECURITY.

ASSIGNMENT *of a* POLICY *of* ASSURANCE *by way of* ADDITIONAL SECURITY.

Parties.

THIS INDENTURE, made the —— day of ——, BETWEEN A. B. of, &c. (*mortgagor*), of the one part, and C. D. of, &c. (*mortgagee*), of the other part: WHEREAS by an indenture dated, &c., and made, &c., certain policies of assurance effected on the life of the said A. B. were assigned by the said A. B. unto the said C. D., by way of mortgage, for securing the payment to the said C. D., of the sum of £3000, with interest thereon after the rate of £5 per cent. per annum: AND WHEREAS the said sum of £3000 is still owing on the security of the said recited indenture: AND WHEREAS by a policy of assurance, dated, &c., and numbered ——, the said A. B. has effected an assurance in his own name, on his own life, with the —— Society, in the sum of £——, under the annual premium of £——: AND WHEREAS the said A. B. has agreed to assign the said recited policy of assurance unto the said C. D., by way of further security as hereinafter expressed: NOW THIS INDENTURE WITNESSETH, that in consideration of the sum of £3000 so remaining owing on the security of the said indenture of mortgage as aforesaid, the said A. B., as beneficial owner, hereby assigns unto the said C. D., ALL THAT the hereinbefore recited policy of assurance, and the said sum of £—— thereby assured, and all other moneys, benefits, and advantages to be had, recovered, or obtained under or by virtue of the said policy: TO HOLD the same unto the said C. D.: PROVIDED ALWAYS, that if the said A. B. shall, on the —— day of —— next, pay to the said C. D. the said sum of £3000 owing on the security of the said indenture of mortgage as aforesaid, and all interest which shall be then due on account of the same sum, then the said policy, moneys, and premises hereby assigned shall at the request and cost of the said A. B. be re-assigned to him: AND THE SAID A. B. hereby covenants with the said C. D., THAT all the covenants, powers and provisions contained in the said indenture of mortgage of the ——

Recite mortgage of policies.

That money remains due.

That mortgagor has effected a further policy.

Agreement by mortgagor to assign further policy.

Witnessing part.

Mortgagor assigns further policy to mortgagee.

Proviso for redemption.

Covenant by mortgagor that all the covenants,

day of ——, shall extend, and be applicable to the policy, moneys, and premises hereby assigned, as if corresponding covenants, powers, and provisions had been expressly inserted in these presents: AND THAT in the event of any moneys being paid by the said C. D., his executors, administrators, or assigns, in discharge of any premiums or otherwise, on account of the said policy hereby assigned, or on account of any further or renewed policy in the place of the policy hereby assigned, or expressed so to be, by reason of the default of the said A. B. to pay such moneys, then the said policies and premises comprised in the said recited indenture of mortgage, and any further or renewed policy or policies in the place of the same policies, or any of them, shall, as well as the policy hereby assigned, and any such further or renewed policy in the place thereof as aforesaid, be charged with all such moneys as shall be so paid by the said C. D., his executors, administrators, or assigns, and with the interest thereof.

OF POLICY, AS ADDITIONAL SECURITY.

trusts, and powers in original mortgage shall extend to this policy.

IN WITNESS, &c.

No. LIX.

MORTGAGE *of* SHARES *in a* RAILWAY COMPANY.

OF RAILWAY SHARES.

THIS INDENTURE, made the —— day of ——, BETWEEN A. B. of, &c. (*mortgagor*), of the one part, and C. D. of, &c. (*mortgagee*), of the other part (*Recite agreement for loan, suprà*, p. 526): AND WHEREAS, with a view to the said intended security, the said A. B. has by a deed (*a*) bearing even date

Parties.

Recite transfer of railway shares by mortgagor to mortgagee.

(*a*) Under the Companies Clauses Consolidation Act (8 & 9 Vict. c. 16), a transfer of railway shares is to be kept by the secretary of the company, and the company is not bound to notice trusts express or implied (sects. 14, 15, 20). It is therefore the most convenient plan upon a mortgage of railway shares for the mortgagor to make an absolute transfer of them to the mortgagee for a nominal consideration, according to the form in the schedule to the Act, accompanied by a deed explaining the object of the transfer as above. It will be borne in mind that this species of mortgage gives to the mortgagee an absolute control over and power of dealing with the shares as they stand in his name only, and he will be the person to

OF RAILWAY SHARES.

with these presents, transferred unto the said C. D., twenty shares of £50 each, in the capital of the —— Railway Company, which shares are numbered respectively (*state the Nos. of the shares*): NOW THIS INDENTURE WITNESSETH, that, in consideration, &c. (*the receipt, &c.*), the said A. B. covenants, &c. (*to pay principal money and interest, suprà*, p. 515): AND IT IS HEREBY AGREED AND DECLARED, that if the said sum of £——, with interest thereon, shall be paid to the said C. D., on the —— day of —— next, according to the foregoing covenant in that behalf, the said railway shares shall, at the request and cost of the said A. B., be re-transferred to him.

Declaration that mortgagee shall hold shares as a security for principal and interest.

IN WITNESS, &c.

No. LX.

MORTGAGE *of a* LEGACY.

OF A LEGACY.

Parties.

THIS INDENTURE, made the —— day of ——, BETWEEN A. B. of, &c. (*mortgagor*), of the one part, and C. D. of, &c. (*mortgagee*), of the other part: WITNESSETH, that in consideration, &c. (*the receipt, &c.*), the said A. B. hereby covenants &c. (*Covenant to pay principal and interest, suprà*, p. 515): And THIS INDENTURE ALSO WITNESSETH, that for the consideration aforesaid, the said A. B., as beneficial owner, hereby assigns unto the said C. D., THE legacy of £—— bequeathed to the said A. B. by the will of X. Y., late of, &c., which will is dated the —— day of ——, and was proved in the principal Probate Registry of the High Court of Justice on the —— day of ——, by L. M. and N. O., the executors thereof, and which legacy remains unpaid: TOGETHER with

Mortgagor assigns legacy to mortgagee,

receive the dividends, but he may, by power of attorney, authorise the mortgagor to receive them. The power of sale conferred by the Conveyancing and Law of Property Act, 1881, is applicable to this species of property.

full power to sue for, recover, receive, and give effectual receipts for the same legacy in the name of the said A. B. or otherwise: To HOLD the same unto the said C. D.: UPON TRUST to receive the said legacy, and out of the same to pay in the first place the expenses attending the obtaining payment thereof, and in the next place to pay and retain the said sum of £——, and the interest thereof, or so much thereof (if any) as shall then remain due, and to pay the surplus (if any) of the said legacy to the said A. B.

OF A LEGACY. — upon trust to apply same in payment of principal, interest, and costs, and to pay surplus to mortgagor.

IN WITNESS, &c.

No. LXI.

MORTGAGE *by* TENANT *for* LIFE, *under section* 18 *of the* SETTLED LAND ACT, 1882, *to* RAISE *money for the* ENFRANCHISEMENT *of* COPYHOLDS, *or for* EQUALITY *of* EXCHANGE *or* PARTITION (*a*).

BY TENANT FOR LIFE UNDER SETTLED LAND ACT.

THIS INDENTURE, made the —— day of ——, BETWEEN A. B., of, &c. (*tenant for life*), of the first part, E. F. of, &c. and G. H. of, &c. (*trustees of the settlement*), of the second part, and C. D. of, &c. (*mortgagee*), of the third part: (*Recite settlement sufficiently to shew that A. B. is tenant for life, and E. F. and G. H. trustees with power of sale, and therefore trustees for the purposes of the Settled Land Act*): AND WHEREAS, under the power in that behalf contained in the Settled Land Act, 1882, the said A. B. has agreed with I. K., the lord of the manor of ——, for the enfranchisement of certain copyhold tenements held of that manor and being part of the hereditaments settled by the said indenture [*or* has agreed to

Parties.

Recital of settlement.

Agreement by tenant for life for enfranchisement, exchange, or partition.

(*a*) In the precedent it is supposed that the property mortgaged is not the same as is the subject of the enfranchisement, exchange, or partition.

The mortgagor is not bound or concerned to see that the money advanced by him is actually wanted for the purpose for which it is expressed to be raised. Sec. 40.

Section 18 does not in terms authorize the raising of money for costs in addition to the money payable for the enfranchisement, &c. But it is apprehended that such a power is implied (see Armstrong *v.* Armstrong, L. R. 18 Eq. 541). At all events the costs may be paid by the trustees out of any capital money in their hands. Sect. 21 (*x*).

BY TENANT FOR LIFE UNDER SETTLED LAND ACT.

exchange part of the hereditaments settled by the said indenture for other hereditaments belonging to X. Y., *or* has agreed to concur in making a partition of the hereditaments, one undivided moiety whereof is settled by the said indenture], and the sum of £—— is required for such enfranchisement [*or* for equality of exchange *or* partition]: AND WHEREAS the said A. B. has requested the said C. D. to lend the sum of £—— required as aforesaid upon mortgage of the hereditaments hereinafter described, being part of the hereditaments settled by the said indenture, which he has agreed to: NOW THIS INDENTURE WITNESSETH, that in consideration of the sum of £——, on or before the execution of these presents paid by the said C. D., at the request of the said A. B., to the said E. F. and G. H. as the trustees of the said settlement for the purpose aforesaid, (the receipt whereof the said E. F. and G. H. hereby acknowledge), the said A. B., in exercise of the power for this purpose vested in him by the Settled Land Act, 1882, and of all other powers (if any) him hereunto enabling, and as beneficial owner (*b*), hereby conveys unto the said C. D. ALL, &c. (*parcels*), TO HOLD the same unto and to the use of the said C. D. in fee simple: PROVIDED ALWAYS that if the said A. B. or any other person interested in the said hereditaments under the said indenture of settlement, shall on the —— day of —— next pay to the said C. D. the sum of £——, with interest thereon after the rate of £—— per cent. per annum, computed from the date of these presents, then and in such case (*c*) the hereditaments hereby conveyed shall be reconveyed to the uses subsisting therein under the said indenture of settlement, such reconveyance to be at the cost of the person or persons requiring the same: AND IT IS HEREBY DECLARED that if the said principal sum of £—— shall not be paid on the said —— day of ——, next, interest shall thenceforth be paid thereon after the rate aforesaid by equal half-yearly payments on the —— day of —— and the —— day of —— in every year: AND the said A. B. hereby covenants with the said C. D. that he, the said A. B., will during his life pay

Agreement for loan.

Witnessing part.

Tenant for life conveys to mortgagee.

Proviso for redemption.

Interest to be paid half-yearly.

Covenant by tenant for life to keep down interest.

(*b*) It is apprehended that the tenant for life, if he chooses to exercise the power of mortgaging, must submit to be bound by the absolute covenants implied by law on the part of a mortgagor.

(*c*) If the property mortgaged is copyhold, the remainder of this proviso should be omitted, and the words "the conveyance hereby made shall be void" should be substituted.

the interest to accrue on the said principal sum as and when the same shall become due and payable: AND the said A. B. hereby acknowledges the right of the said C. D. to production of the said indenture of settlement [and also of the documents mentioned in the schedule hereto] and to delivery of copies thereof, and he hereby undertakes for the safe custody thereof.

BY TENANT FOR LIFE UNDER SETTLED LAND ACT.

Acknowledgment of right to production of deeds.

IN WITNESS, &c.

No. LXII.

MORTGAGE *by* TENANT *for* LIFE *under section* 18 *of the* SETTLED LAND ACT, 1882, *to* RAISE *money for* ENFRANCHISEMENT *or for* EQUALITY *of* EXCHANGE *or* PARTITION. (*Another form, where the subject of the enfranchisement exchange, or partition is also the subject of the mortgage.*)

BY TENANT FOR LIFE UNDER SETTLED LAND ACT.

THIS INDENTURE, made the —— day of ——, BETWEEN A. B. of, &c. (*tenant for life*), of the first part, E. F. of, &c., and G. H. of, &c. (*trustees of the settlement*), of the second part, and C. D. of, &c. (*mortgagee*), of the third part (*Recite settlement sufficiently to shew that A. B. is tenant for life and E. F. and G. H. trustees with power of sale, and therefore trustees for purposes of Settled Land Act, and recite also deed of enfranchisement or exchange or partition, shewing that the money for enfranchisement or for equality of exchange or partition was paid by the trustees at the request of the tenant for life*): AND WHEREAS the sum of £—— in the said indenture bearing even date herewith expressed to be paid by the said E. F. and G. H. for enfranchisement [*or* for equality of exchange *or* partition] as aforesaid, was advanced to them for that purpose by the said C. D. at the request of the said A. B., it having been agreed between the said A. B. and the said C. D. that the said C. D. should advance the same, and that the repayment thereof with interest should be secured to him in the manner hereinafter expressed: NOW THIS INDENTURE WITNESSETH, that in consideration of the sum of £——, so as aforesaid paid by the said C. D. at the request of the said A. B.

Parties.

Recital of settlement and of deed of enfranchisement, exchange, or partition;

that money paid for enfranchisement, &c., was advanced by mortgagee;

and agreement for mortgage.

Witnessing part.

Consideration.

BY TENANT FOR LIFE UNDER SETTLED LAND ACT.

to the said E. F. and G. H. as the trustees of the said settlement (the receipt whereof the said E. F. and G. H. hereby acknowledge), the said A. B., &c. (*remainder of precedent the same as the last one*).

IN WITNESS, &c.

No. LXIII.

BY TRUSTEES UNDER SETTLED LAND ACT.

MORTGAGE *by the* TRUSTEES *of a* SETTLEMENT *on behalf of an* INFANT TENANT IN TAIL *under sections* 18 *and* 60 *of the* SETTLED LAND ACT, 1882, *to* RAISE *money for* ENFRANCHISEMENT, *or for* EQUALITY *of* EXCHANGE *or* PARTITION.

Parties.

THIS INDENTURE, made the —— day of ——, BETWEEN E. F. of, &c., and G. H. of, &c. (*trustees of settlement*), of the one part, and C. D. of, &c. (*mortgagee*), of the other part (*Recite settlement sufficiently to shew that A. B. an infant is tenant in tail in possession, and that E. F. and G. H. are trustees of the settlement*): AND WHEREAS under the power in that behalf contained in the Settled Land Act, 1882, the said E. F. and G. H., on behalf of the said A. B., have agreed, &c. (*agreement for enfranchisement, exchange, or partition as in precedent No. LXI.*): AND WHEREAS the said E. F. and G. H., on behalf of the said A. B., have requested, &c. (*agreement for loan, as in precedent No. LXI.*): NOW THIS INDENTURE WITNESSETH, that in consideration of the sum of £—— on or before the execution of these presents paid by the said C. D. to the said E. F. and G. H. as trustees of the said settlement (the receipt whereof the said E. F. and G. H. hereby acknowledge), the said E. F. and G. H., on behalf of the said A. B., and in exercise of the power for this purpose vested in them by the Settled Land Act, 1882, and of all other powers (if any) them hereunto enabling, and as trustees hereby convey, &c. (*remainder of precedent the same as No. LXI., omitting the covenant by A. B. to pay interest, and substituting in the acknowledgment of right to production of deeds, and undertaking for safe custody,* "the said E. F. and G. H., on behalf of the said A. B.," *for* "the said A. B.").

Recital of settlement;

agreement by trustees on behalf of infant tenant in tail for enfranchisement, &c., and to borrow money on mortgage.

Witnessing part.

Consideration.

Trustees on behalf of infant convey to mortgagee.

IN WITNESS, &c.

No. LXIV.

MORTGAGE *by* TENANT *for* LIFE *of* LANDS *by way of* SUBSTITUTION *for* LANDS RELEASED *by* MORTGAGEE *on a* SALE, *under section 5 of the* SETTLED LAND ACT, 1882. SUBSTITUTED SECURITY UNDER SETTLED LAND ACT.

THIS INDENTURE, made the —— day of ——, BETWEEN A. B. of, &c. (*tenant for life*), of the one part, and C. D. of, &c. (*mortgagee*), of the other part (*Recite mortgage by X. Y. to C. D., and will of X. Y., devising all his real estate in strict settlement, under which A. B. is tenant for life—death of testator—and probate of will*): AND WHEREAS the said A. B., under the powers of the Settled Land Act, 1882, lately agreed to sell the hereditaments comprised in the said indenture of mortgage to L. M. of, &c., and with a view to such sale the said A. B. agreed with the said C. D. that the said hereditaments hereinafter described and intended to be hereby conveyed (being part of the real estate devised by the said will as aforesaid) should be substituted for the hereditaments agreed to be sold as aforesaid as a security for the said mortgage debt of £—— and the interest thereof: AND WHEREAS the said sale has been carried into effect by an indenture bearing even date herewith, and the said C. D. joined in that indenture so as to release the hereditaments comprised therein from the said mortgage debt and the interest thereof: NOW THIS INDENTURE WITNESSETH that in consideration of the premises, the said A. B. as beneficial owner, in exercise of the power for this purpose conferred on him by section 5 of the Settled Land Act, 1882, and of all other powers (if any) him hereunto enabling, and as beneficial owner hereby conveys unto the said C. D. ALL, &c. (*parcels*), TO HOLD the same unto and to the use of the said C. D. in fee simple, subject to the same right or equity of redemption as immediately before the execution of the said indenture bearing even date herewith was subsisting in the hereditaments comprised in the said indenture of mortgage under or by virtue of that indenture, To the end and intent that the hereditaments hereby conveyed may be substituted for the hereditaments comprised in the said indenture of mortgage as a security for the said principal sum and interest thereby secured.

Parties.

Recital of mortgage and of will of mortgagor;

agreement by tenant for life to sell, and between tenant for life and mortgagee for substitution of other property as security;

that sale has been completed with concurrence of mortgagee.

Witnessing part.,

Tenant for life conveys other hereditaments

to mortgagee subject to same right of redemption, and by way of substitution for lands sold.

IN WITNESS, &c.

No. LXV.

OF REVERSIONARY INTEREST IN PERSONALTY.

MORTGAGE *of* REVERSIONARY INTEREST *in a Share of personal estate under a* WILL,—COVENANTS *by the* FATHER *of* MORTGAGOR, *and by his* MOTHER *with a View to bind her* SEPARATE ESTATE, *to pay the* INTEREST, *by way of* ADDITIONAL SECURITY.

Parties. THIS INDENTURE, made the —— day of ——, BETWEEN A. B. of, &c. (*mortgagor*), of the first part, C. D. of, &c., and E., his wife (*the father and mother of the said A. B.*) of the second part, and G. H. of, &c. (*mortgagee*), of the third part:

Recite will under which mortgagor is entitled to one-third of personal estate. WHEREAS under the will of L. M., late of ——, deceased, dated the —— day of ——, and duly proved in the principal Probate Registry of the High Court of Justice, the said A. B. is beneficially entitled to one equal third part or share of the residuary personal estate and effects of the said L. M., deceased, in reversion expectant on the decease or marriage again, whichever shall first happen, of N. O.: AND WHEREAS part of the residuary personal estate and effects of the said L. M., deceased, or of the investments of the produce thereof, consists of the sum of £—— £3 per Cent. Consolidated Annuities, now standing in the names of X. Y. and Y. Z., as the present trustees of the said will: AND WHEREAS neither the amount nor the particulars of the remainder (if any) of the residuary personal estate and effects of the said L. M., deceased, can at present be ascertained (*Agreement for loan, supra*, p. 526): NOW THIS INDENTURE WITNESSETH, that in consideration, &c. (*the receipt, &c.*), the said A. B. &c., (*Covenant to pay principal and interest, suprà*, p. 515): AND THIS INDENTURE ALSO WITNESSETH, that for the consideration aforesaid, the said A. B., as beneficial owner, hereby assigns unto the said G. H., ALL THAT the one equal third part or share of him the said A. B. under or by virtue of the said will of the said L. M., deceased, expectant as aforesaid, of and in the said sum of £—— £3 per Cent. Consolidated Annuities, and of and in all other (if any) the residuary personal estate and effects of the said L. M.,

Funds of which part of personal estate consists.

Remainder of personal estate not ascertained.

Agreement for mortgage.

Witnessing part.

Consideration.

Assignment of personalty expectant on death or marriage of N. O.

deceased, and the proceeds thereof, and of and in the stocks, funds, and securities in or upon or of which the same or any part thereof may be invested or consist, or by which the same may be represented, howsoever the same respectively may be invested, circumstanced, secured or described, and the income and accumulations thereof respectively: To HOLD the same share and premises unto the said G. H., PROVIDED ALWAYS that if the said sum of £——, with interest thereon, shall be paid to the said G. H., on the said —— day of —— next, according to the foregoing covenant in that behalf, the said share and premises hereby assigned shall at the request and cost of the said A. B. be re-assigned to him or them: AND IN PURSUANCE OF THE SAID AGREEMENT in this behalf, the said C. D., and with intent to bind her separate estate, the said E. D., respectively hereby covenant with the said G. H., that in case and as often as the said A. B., or his representatives, shall neglect or fail to pay the interest on the said sum of £——, or any part thereof, for the space of fourteen days next after the respective days hereinbefore appointed for payment of such interest, they the said C. D. and E. his wife, or one of them, shall and will pay the interest on the said sum of £——, or so much of such interest as the said A. B., or his representatives, shall so for the time being have neglected or failed to pay.

OF REVERSIONARY INTEREST IN PERSONALTY.

Habendum to mortgagee.

Proviso for redemption.

Covenants by father and mother of mortgagor to pay the interest in case of default.

IN WITNESS, &c.

No. LXVI.

MORTGAGE *by* TENANT FOR LIFE *and* REVERSIONER *of their interests in a* RESIDUARY ESTATE *under a* WILL. *The* REVERSIONER *joins as* SURETY.

MORTGAGE BY TENANT FOR LIFE AND REVERSIONER OF RESIDUARY ESTATE UNDER A WILL.

THIS INDENTURE, made, &c., BETWEEN A. B. of, &c. (*mortgagor*), of the first part, C. D. of, &c. (*surety*), of the

Parties.

MORTGAGE BY TENANT FOR LIFE AND REVERSIONER OF RESIDUARY ESTATE UNDER A WILL.

second part, and E. F. of, &c. (*mortgagee*), of the third part (*Recite will of G. H., whereby, after making certain devises and bequests, he gave all the residue of his real and personal estate to trustees upon trust for sale and conversion, to invest proceeds, and pay income to A. B. his wife for her life, and on her death to divide the principal between sons attaining twenty-one, and daughters attaining twenty-one or marrying, in equal shares—Death of testator and probate of his will*): AND WHEREAS there were issue of the said G. H. two children and no more, and the said C. D. is one of such children, and he has attained the age of twenty-one years: AND WHEREAS the said E. F. hath agreed to lend to the said A. B. the sum of £——, on having the repayment thereof with interest secured to him in the manner hereinafter expressed: AND WHEREAS the said C. D. hath agreed to join in these presents as surety for the said A. B. in manner hereinafter mentioned: NOW THIS INDENTURE WITNESSETH, that in consideration of the sum of £—— to the said A. B. paid by the said E. F. on or before the execution of these presents (*the receipt, &c.*), the said A. B. and C. D. jointly and severally covenant with the said E. F. to pay, &c. (*to pay principal and interest, suprà*, 515): AND THIS INDENTURE ALSO WITNESSETH, that for the consideration aforesaid the said A. B. and C. D. as beneficial owners hereby respectively assign unto the said E. F. FIRST, ALL the estate and interest of the said A. B. for her own life under or by virtue of the said recited will in the residuary real and personal estate thereby devised and bequeathed, and in the moneys produced and to be produced by the sale and conversion thereof, and in the stocks, funds, securities, and properties of which the same respectively may for the time being consist, or by which the same respectively may for the time being be represented, and the income thereof: AND SECONDLY ALL that the one undivided moiety or equal half part of the said C. D., under or by virtue of the said recited will expectant on the decease of the said A. B., in the same residuary real and personal estate, moneys, stocks, funds, securities, and properties, and income: TO HOLD the same unto the said E. F., PROVIDED ALWAYS, that if the said sum of £——, with interest thereon, shall be duly paid to the said E. F. on

Recite will of testator, his death, and probate of the will,

that testator had issue two children,

and that reversioner is one,

that reversioner has agreed to join as surety.

Consideration.

Joint and several covenants by tenant for life and reversioner to pay principal and interest.

Tenant for life and reversioner assign life interest and reversion

to mortgagee,

the said —— day of —— next, according to the foregoing covenant in that behalf, then and in such case the premises hereby assigned shall be re-assigned to the said A. B., and C. D., according to their respective estates and interests respectively, and at their own expense.

MORTGAGE BY TENANT FOR LIFE AND REVERSIONER OF RESIDUARY ESTATE UNDER A WILL.

In witness, &c.

subject to proviso for redemption.

No. LXVII.

AGREEMENT *for* Mortgage *of* Freehold *and* Leasehold Property *accompanied by deposit of* Lease.

AGREEMENT FOR MORTGAGE.

THIS INDENTURE, made the —— day of ——, Between A. B. of, &c. (*mortgagor*), of the one part, and C. D. of, &c. (*mortgagee*), of the other part: Whereas the said A. B. hath requested the said C. D. to lend him the sum of £3000, which the said C. D. hath agreed to do upon having the repayment thereof with interest secured to him by a mortgage of the freehold hereditaments at ——, in the county of ——, described in the schedule hereto, and by an equitable mortgage of certain leasehold premises at ——, in the county of ——, held under an indenture of lease, dated the —— day of ——, and made between —— of the one part, and —— of the other part, and by such further stipulations in relation thereto as are hereinafter contained: And whereas the title to the said freehold hereditaments cannot be forthwith made out and investigated, but the said A. B. having immediate occasion for the sum of £1000, part of the said sum of £3000, hath requested the said C. D. to advance him the same at once, and as an inducement to him so to do hath deposited with him the said indenture of lease (as he the said C. D. doth hereby acknowledge), and hath also agreed to execute these presents: NOW THIS INDEN-

Parties.

Recite agreement for advance.

That title to freeholds has not been investigated.

Deposit of lease.

Witnessing part.

AGREEMENT FOR MORTGAGE.

TURE WITNESSETH, that in consideration of the sum of £1000 (part of the said intended loan of £3000) to the said A. B. now paid by the said C. D. (*the receipt, &c.*), and also in consideration of the further sum of £2000 (residue of the said intended loan of £3000) which is intended to be advanced by the said C. D. to the said A. B. on the execution of the mortgage of the freehold hereditaments hereinafter mentioned, he the said A. B. hereby covenants with the said C. D. that the said indenture of lease, and the said leasehold hereditaments and premises comprised therein, shall be a security for the payment to him, as well of the said sum of £1000, with interest for the same after the rate of £—— per cent. per annum, to be computed from the date of these presents, as also of the said further sum of £2000, residue of the said intended loan of £3000, with interest for the same, after the rate aforesaid, to be computed from the time or respective times of lending the same; and also that the said A. B. will, within one calendar month from the date hereof, at his own expense, deduce and show a good and marketable title to the said freehold hereditaments for an estate in fee simple in possession, free from incumbrances, and will, upon receipt of the said sum of £2000, the residue of the said intended loan, by all such assurances and other acts in the law as the said C. D. shall require, convey the said freehold hereditaments unto the said C. D. in fee simple by way of mortgage, for further securing to him the repayment of the said sum of £3000, with interest for the same after the rate aforesaid; and such assurance or assurances by way of mortgage, or some or one of them, shall contain proper covenants for payment of the principal money and interest thereby secured at the expiration of six calendar months from the date thereof, but nevertheless with provisions restraining the mortgagor from paying off the same within three years, and the mortgagee from calling in the same within five years from the date thereof, unless default shall be made in regular payment of the interest on the half-yearly days of payment to be therein specified, or within twenty-one days after the same respectively: AND ALSO that if default shall at any time be made in payment of the interest on the said principal sum of £3000, or any part

Mortgagor, in consideration of part of advance, covenants that lease shall be security;

and that he will deduce title to freeholds;

and assure same to mortgagee.

Mortgage to contain a clause not to pay off or call in.

thereof, for twenty-one days after either of the said half-yearly days of payment, then and in such case he the said A. B., will, within one calendar month next after he or they shall have been requested so to do, execute an assignment or underlease of the said leasehold hereditaments to the said C. D., or as he shall appoint, by way of mortgage, for further and better securing to him or them the repayment of the said sum of £3000, with interest for the same after the rate and in the manner aforesaid, and with such provisions, if any, for not paying off and not calling in the said principal sum as shall for the time being be subsisting under or by virtue of the said mortgage, assurance, or assurances so to be made of the said freehold hereditaments as hereinbefore is mentioned: AND THE SAID A. B. hereby further covenants with the said C. D., that in the meantime, and until the several assurances shall be made and executed as aforesaid, these presents shall enure as a good equitable mortgage of all the said freehold and leasehold hereditaments and premises for securing to the said C. D. the said sum of £3000, or so much thereof as shall for the time being have been actually advanced by him or them to the said A. B., and the interest thereof after the rate aforesaid.

AGREEMENT FOR MORTGAGE.

Covenant by mortgagor to execute an underlease or assignment in case of default.

These presents to be a good equitable security.

IN WITNESS, &c.

THE SCHEDULE ABOVE REFERRED TO.

No. LXVIII.

MEMORANDUM *of* DEPOSIT *of* TITLE DEEDS *to secure a given* SUM, *and* CHARGE *on the* PROPERTY *comprised in the* DOCUMENTS *deposited, and* AGREEMENT *to execute* LEGAL MORTGAGE *if required.*

MEMORANDUM OF DEPOSIT OF TITLE DEEDS.

MEMORANDUM OF AGREEMENT, made and entered into this —— day of ——, BETWEEN A. B., of &c. (*mortgagor*), of

Parties.

MEMORANDUM OF DEPOSIT OF TITLE DEEDS.

the one part, and C. D. of, &c. (*mortgagee*), of the other part: IT IS HEREBY agreed between the parties hereto, that in consideration of the sum of £—— to the said A. B. paid by the said C. D. on or before the signature of this agreement, the documents comprised in the schedule hereto (which the said A. B. has this day deposited with the said C. D.) shall henceforth be held by the said C. D. as an equitable security for the payment by the said A. B. to the said C. D., on the —— day of —— next, of the sum of ——, together with interest thereon, after the rate of £—— per cent. per annum, to be computed from the date hereof: AND THE SAID A. B. hereby charges all the hereditaments and property comprised in the said documents or to which the same relate, with the payment to the said C. D. of the said sum of £——, and of the interest thereon after the rate aforesaid: AND also agrees at any time or times during the continuance of this security, upon the request of the said C. D., but at the cost of the said A. B., to execute to the said C. D. a legal mortgage (*a*) of the said hereditaments and property, and with such powers and provisions and in such form as the said C. D. may require for further securing the payment of the money then owing upon the security of this agreement, with interest for the same after the rate aforesaid: [AND it is hereby further agreed (*b*) that the said C. D., his executors, administrators, and assigns, shall have all the powers conferred on mortgagees by sections 19 to 24 both inclusive and by section 67 of the Conveyancing and Law of Property Act, 1881, in like manner as if these presents had been a mortgage by deed, and that the said A. B. and all persons deriving title under him shall, upon any sale made under the said statutory power, execute and do such assurances and things for vesting in the purchaser the legal estate of the property sold as shall be required in that behalf by the person or persons by whom the sale shall have been made].

Agreement that title deeds comprised in schedule shall be security for given sum.

Charge on the property comprised in the deeds.

Agreement by mortgagor to execute a legal mortgage, on request.

Agreement that equitable mortgagee shall have statutory powers.

IN WITNESS, &c.

THE SCHEDULE ABOVE REFERRED TO.

(*a*) See Hermann *v.* Hodges, L. R. 16 Eq. 18.
(*b*) The clause in brackets will be found useful.

No. LXIX.

MEMORANDUM *of* DEPOSIT *of* TITLE DEEDS, *to secure a given* SUM *and future* ADVANCES, *and* CHARGE *on the* PROPERTY *comprised in the* DOCUMENTS *deposited, and* AGREEMENT *to execute* LEGAL MORTGAGE *if required.*

MEMORANDUM OF DEPOSIT OF TITLE DEEDS TO SECURE FUTURE ADVANCES.

MEMORANDUM OF AGREEMENT, made and entered into this —— day of ——, BETWEEN A. B. of, &c. (*mortgagor*), of the one part, and C. D. of, &c. (*mortgagee*), of the other part: Parties.

IT IS HEREBY AGREED between the parties hereto, that in consideration of the sum of £—— to the said A. B. paid by the said C. D. on or before the signature of this agreement, and in consideration of such further advances as are hereinafter mentioned, the documents comprised in the schedule hereto (which the said A. B. has this day deposited with the said C. D.) shall henceforth be held by the said C. D. as an equitable security for the payment by the said A. B. to the said C. D., on the —— day of —— next, of the sum of £——, together with interest thereon, after the rate of £—— per cent. per annum, to be computed from the date hereof, and also for the payment of such further sum and sums as shall at any time or times hereafter, whilst the said documents shall continue in the possession of the said C. D., be advanced by him to the said A. B., together with interest thereon after the rate aforesaid on all such sum and sums, to be computed from the time or respective times of advancing the same respectively, at the expiration of six calendar months from the time or respective times of such respective advances being made: AND THE SAID A. B. hereby charges all the hereditaments and property comprised in the said documents or to which the same relate, with the payment to the said C. D. of the said sum of £——, and all such further advances as aforesaid, and of the interest thereon respectively after the rate aforesaid: AND ALSO agrees at any time or times during the continuance of this security, upon the request of the said C. D., but at the cost of the said A. B., to make and execute to

Agreement that title deeds comprised in schedule shall be security for given sum and future advances.

Charge on the property comprised in the deeds.

Agreement by mortgagor to execute legal mortgage on request.

MEMORANDUM OF DEPOSIT OF TITLE DEEDS TO SECURE FUTURE ADVANCES.

the said C. D. a legal mortgage of the said hereditaments and premises in such form and with such powers and provisions as the said C. D. may require for further securing the payment to the said C. D. of the moneys which shall then be owing on the security of this agreement, with interest thereon after the rate aforesaid (*Agreement that equitable mortgagee shall have statutory power, suprà*, p. 626).

In witness, &c.

The Schedule above referred to.

No. LXX.

MEMORANDUM OF DEPOSIT WITH BANKING COMPANY.

MEMORANDUM *of* Deposit of Deeds, *with a* Banking Company, *to secure* Balance of Account Current.

Property comprised in deposited deeds to be security for current account.

I, the undersigned A. B., of, &c. (*mortgagor*), hereby acknowledge that I have this day deposited with the —— Banking Company the documents specified in the schedule hereunder written with intent to create an equitable mortgage upon the property to which such documents relate, and all the trade and other fixtures which now are, or which at any time or times hereafter may be in, upon, or about the same property for the purpose of securing the payment to the said Company of all moneys which now are, or which at any time or times hereafter may become due from me, whether alone or in co-partnership with any other person or persons, in account current with the said Company, or upon any cheques, promissory notes, or bills of exchange, drawn, accepted, or endorsed by me, or which shall have been paid for my credit, either solely or jointly with others (including interest with half-yearly rests, commission, and other customary charges): And I hereby agree to pay off all such moneys when thereunto required by the said Company, or by their Secretary, or the Manager or any Branch Manager thereof:

MEMORANDUM OF DEPOSIT WITH BANKING COMPANY.

AND I hereby agree (*a*) and declare that the said Company may, at any time or times hereafter, sell the said property, trade, and other fixtures, or any part thereof, and may buy in at sales by auction, or rescind contracts for sale, and resell without being answerable or accountable for any loss or diminution in price, and may, with and out of the sale moneys, retain all moneys owing on this security, with all costs and expenses incurred in relation thereto, the surplus (if any) to be paid to me: AND I hereby agree to execute any deed or deeds which may be necessary in order to convey the legal estate to the purchaser or purchasers: PROVIDED nevertheless that such power (yet so that this proviso shall not affect any purchaser under any sale pursuant to the said power) shall not be exercised unless default shall be made in payment of the balance on the said account current or other the moneys due from me, and the interest thereon, or some part thereof, for one calendar month after a notice in writing demanding such payment shall have been given to me by or on behalf of the said Company, or shall have been left for me at my usual or last-known place of abode in England or Wales, or at or upon some part of the property subject to this security, or unless such default shall be made for one calendar month after the said account shall have been closed (which shall first happen): AND I hereby further agree at any time or times, upon the request of the said Company, but at the cost of myself, to execute to the said Company a legal mortgage of such property, trade, and other fixtures, in such form and with such power of sale and other provisions as the said Company may require for securing the payment of the moneys secured by such deposit and equitable mortgage as aforesaid: AND I hereby also agree that if, at the time when the said

Power of sale.

Agreement by mortgagor to execute legal mortgage, on request.

(*a*) If preferred, the following can be substituted for the power of sale in the text:—

AND I DECLARE that the said Company shall have all the powers conferred on mortgagees by sections 19 to 24 inclusive and section 67 of the Conveyancing and Law of Property Act, 1881, in like manner as if these presents had been a mortgage by deed, and I agree in the event of any sale by the said Company under the statutory power to execute all assurances which may be required for vesting the legal estate in the purchaser.

MEMORANDUM OF DEPOSIT WITH BANKING COMPANY.

account current shall be closed, a balance thereon or any other moneys shall be owing to the said Company, I will, so long as such balance or other moneys as aforesaid or any part thereof shall remain owing, pay interest thereon to the said Company after the rate of £5 per cent. per annum, computed from the time when such balance or other moneys shall be ascertained: As WITNESS my hand this —— day of ——, 18—.

To pay interest on balance after account is closed.

THE SCHEDULE ABOVE REFERRED TO.

No. LXXI.

OF DEPOSIT OF MISCELLANEOUS SECURITIES.

MEMORANDUM *of* DEPOSIT *of* MISCELLANEOUS SECURITIES, *with a* BANKING COMPANY *to secure* ACCOUNT CURRENT.

Property, moneys, and advantages comprised in deposited documents to be security for account current.

I, the undersigned A. B., of, &c. (*mortgagor*) do hereby acknowledge that I have this day deposited with the —— Banking Company the documents comprised in the schedule hereunder written to the intent that the same, and all the property, moneys, and advantages, comprised in, secured or represented by, and derivable under or by virtue of such documents, shall be a security for the payment to the said Company of all moneys which now are, or which at any time or times hereafter may become, due from me, whether alone or in co-partnership with any other person or persons in account current with the said Company, or upon any cheques, promissory notes, or bills of exchange drawn, accepted, or indorsed by me, or which shall have been paid for my credit, either solely or jointly with others (including interest with half-yearly rests, commission, and other customary charges): AND I hereby agree to pay off all such moneys when thereunto required by the said Company, or by their Secretary or the Manager, or any Branch Manager thereof: AND I hereby agree and declare that the said Company may, at any time or times after default by me in such payment, sell the said pro-

Power of sale.

perty, moneys, and advantages, and the securities for the same or any of them, or any part thereof, and may buy in or rescind contracts for sale, and resell without being accountable for any loss or diminution in price, and may, out of the sale moneys, retain all moneys owing on this security, with all costs and expenses incurred in relation thereto, the surplus (if any) to be paid to me, and if there be any deficiency it shall be made good by me: And I hereby also agree that if at the time when the said account shall be closed a balance thereon, or any other moneys, shall be owing from me to the said Company, I will, so long as such balance or other moneys as aforesaid, or any part thereof, shall remain owing, pay interest thereon to the said Company, after the rate of £5 per cent. per annum, computed from the time when such balance or other moneys shall be ascertained: As witness my hand this —— day of ——, 18—.

OF DEPOSIT OF MISCELLANEOUS SECURITIES.

Agreement by mortgagor to pay interest on balance after account is closed.

The Schedule above referred to.

No. LXXII.

DEED *of* Further Charge (*by indorsement*) (*a*).

FURTHER CHARGE BY INDORSEMENT.

THIS INDENTURE, made the —— day of ——, Between the within-named A. B. (*mortgagor*), of the one part, and the within-named C. D. (*mortgagee*) of the other part: WITNESSETH, that in consideration of the sum of £500 now paid to the

Parties.

(*a*) If the mortgage deed is engrossed bookwise, so as not to admit of an indorsement, it is convenient to leave one or more blank pages at the end for deeds of a supplemental character, *e.g.*, further charges or transfers, and a reconveyance. As each page so left will be half of a skin of parchment, of which the other half will be occupied by part of the principal deed, the two instruments will be as inseparable as if one were indorsed on the skin. Where one deed is written at the end of another as above suggested, the precedent in the text will be applicable, the word "above-named" or "above-written" being substituted throughout for "within-named" or "within-written."

When principal deed is engrossed bookwise, supplemental deed may be written at end, instead of indorsed.

FURTHER CHARGE BY INDORSEMENT.

said A. B. by the said C. D. (*the receipt whereof, &c.*), the said A. B. hereby covenants with the said C. D. to pay to him, on the —— day of —— next (*a*), the sum of £500, with interest for the same after the rate of £— per cent. per annum, computed from the date of these presents: AND also so long after that day as any principal money remains due under these presents to pay to him interest thereon after the rate aforesaid by equal half-yearly payments, on the —— day of ——, and the —— day of ——: AND FURTHER, that all the lands and hereditaments comprised in the within-written indenture shall stand charged with the payment to the said C. D. of the said sum of £500 and the interest thereon hereinbefore covenanted to be paid, as well as the sum of £1000 and interest secured by the within-written indenture.

Covenant by mortgagor to pay further advance and interest.

That property comprised in mortgage shall be a security for further as well as original advance.

IN WITNESS, &c.

No. LXXIII.

FURTHER CHARGE.

DEED *of* FURTHER CHARGE (*not by indorsement*).

Parties.

THIS INDENTURE, made the —— day of ——, BETWEEN A. B., of, &c. (*mortgagor*), of the one part, and C. D., of, &c. (*mortgagee*), of the other part: WHEREAS (*b*) by an indenture

Recite mortgage.

(*a*) This should be the next half-yearly day for payment of interest mentioned in the mortgage deed.

Observations on sect. 53 of the Act as to a deed expressed to be supplemental to a previous deed.

(*b*) According to the form of "further charge" given in the 4th Schedule to the recent Act, the mortgage deed is not recited, but the further charge is described as supplemental to it. This is therefore a convenient place in which to refer to section 53, which enacts that "a deed expressed to be supplemental to a previous deed, or directed to be read as an annex thereto, shall, as far as may be, be read and take effect as if the deed so expressed or directed were made by way of indorsement on the previous deed, or contained a full recital thereof."

This section is apparently founded on a notion that an indorsement or a full recital has without the enactment some special effect on the construction of the later deed, which any other mode of reference would not have. A deed indorsed on another is shorter than a separate deed, simply because, the two instruments being inseparably connected, the reference to "the within-written indenture" is a sufficient identification, whereas a deed not indorsed must give such details of the previous one as will enable it to be easily identified. A recital has been found a convenient form of reference, but it has no special efficacy, and any other mode of reference is equally

dated, &c., and made between the said A. B. of the one part, and the said C. D. of the other part, ALL, &c. (*parcels*) (*c*), were conveyed by the said A. B. unto and to the use of the said C. D., in fee simple by way of mortgage for securing payment to him of the sum of £1000, with interest thereon, which principal sum still remains owing: NOW THIS INDENTURE WITNESSETH, &c. (*the same as last Precedent to the end, substituting the words* "the hereinbefore recited indenture," for "the within-written indenture").

FURTHER CHARGE.

IN WITNESS, &c.

efficacious. The section therefore is superfluous, and is open to the further objection that it purports to give to a deed described as supplemental a special construction and effect, whereas such construction and effect is not special at all, but the same that this and every other form of reference, if sufficient for the purpose of identification, has already. The section really amounts to no more than a suggestion on the part of the framers of the Act, that to call one deed supplemental to a previous one is a neat and convenient form. Treating it, therefore, in this light, the practical question for the draftsman is whether he shall adopt the plan thus suggested. There is, of course, no objection to it; nor, on the other hand, does it seem to possess any advantage. If adopted, the previous deed ought to be described quite as fully as it would be *necessary* to do if it were recited—*i.e.*, not only its date and parties must be stated, but as there might be more than one deed of the same date and with the same parties, the nature and situation of the property comprised in it, and the object of it, should be shortly mentioned. On the whole, the draftsman will probably prefer to adopt an uniform mode of reference to a previous deed, viz., that by recital, making such recital no longer than is necessary to identify the deed recited, rather than have to consider in each case which of the two plans is most appropriate.

It may be pointed out that forms A, B in part II. of the 3rd Schedule to the Act, and also the form of re-conveyance in part III. of that Schedule, appear defective for the reason above-mentioned, *i.e.*, that they do not describe the previous deed sufficiently to enable it to be readily identified.

(*c*) If the parcels are long, they need not be fully set out in the recital, but it will be sufficient to describe them in some concise manner, *e. g.* "the messuage and lands called —— farm, situate in the parish of ——, in the county of ——, in the said indenture particularly described," [or "the capital messuage called —— House, situate, &c.,"] and divers other messuages, lands, and hereditaments, situate in, &c., therein particularly described." The above observation applies to transfers and reconveyances, as well as to deeds of further charge.

Mode of describing parcels in recital of mortgage.

No. LXXIV.

FURTHER CHARGE AND COLLATERAL SECURITY.

FURTHER CHARGE *on a* LIFE INTEREST *and* POLICY *of* ASSURANCE PREVIOUSLY MORTGAGED, *and* COLLATERAL SECURITY *on a* NEW POLICY *effected in the* NAME *of the* MORTGAGEE (*by indorsement on Precedent No. XXVIII.*).

Parties. THIS INDENTURE, made the —— day of ——, BETWEEN the within-named A. B. (*mortgagor*), of the one part, and the

Recite that principal sum remains owing. within-named C. D. (*mortgagee*), of the other part: WHEREAS the principal sum of £—— secured by the within-written indenture remains owing, but all interest thereon has been paid up to the —— day of —— last (*that principal money remains owing, suprà*, p. 633): AND WHEREAS the said C. D. hath agreed to lend

Agreement for further advance. to the said A. B. the further sum of £500, upon having the repayment thereof, with interest for the same, secured to him in the manner hereinafter expressed: AND WHEREAS by a policy (*Recite policy on the life of A. B. in the name of C. D., suprà*, p. 551): NOW THIS INDENTURE WITNESSETH, that in

Witnessing part. Covenant to pay principal and interest, and further charge. consideration, &c. (*Covenant by mortgagor to pay principal and interest, suprà*, p. 515): AND FURTHER, that the dividends, interest, and annual produce, and policy of assurance comprised in the within-written indenture shall stand charged, &c. (*as in Precedent No. LXIX., to the end*, p. 632): AND IT IS HEREBY

Agreement that mortgagee shall hold new policy, subject to same right of redemption, &c., as former policy. AGREED AND DECLARED, that the said C. D. shall stand possessed of the hereinbefore recited policy of assurance and the moneys thereby assured, subject to the same right of redemption as is now subsisting in the within-mentioned policy of assurance, and the moneys thereby assured, under or by virtue of the within-written indenture, and the further charge hereinbefore made (*Covenants by A. B. to keep on foot* "the hereinbefore recited policy," *and* "otherwise in relation thereto"—see *suprà*, p. 550).

IN WITNESS, &c.

No. LXXV.

FURTHER CHARGE *on* FREEHOLDS *comprised in a* FORMER MORTGAGE, *and* MORTGAGE *of* ADDITIONAL FREEHOLDS, *both* PROPERTIES *being made a* SECURITY *for the* ORIGINAL DEBT *and* FURTHER ADVANCE (*a*).

FURTHER CHARGE AND MORTGAGE OF ADDITIONAL FREEHOLDS, BOTH PROPERTIES TO BE SECURITY FOR BOTH DEBTS.

THIS INDENTURE, made the —— day of ——, BETWEEN A. B. of, &c. (*mortgagor*), of the one part, and C. D. of, &c. (*mortgagee*), of the other part: WHEREAS by an indenture dated, &c., and made between the said A. B., of the one part, and the said C. D., of the other part, in consideration of the sum of £1000 paid to the said A. B. by the said C. D., ALL that farm, &c., called —— therein particularly described, was conveyed by the said A. B. unto the said C. D. in fee simple, subject to the proviso therein contained for the redemption of the said hereditaments and premises on payment by the said A. B. to the said C. D. of the sum of £1000 and interest thereon as therein mentioned: AND WHEREAS the said principal sum of £1000 remains due upon the security of the said indenture, but all interest thereon has been paid up to the date of these presents: AND WHEREAS the said C. D. has agreed to lend to the said A. B. the further sum of £500 upon having the repayment thereof with interest thereon secured by a further charge on the hereditaments comprised in the said indenture, and upon having the repayment of both the said sums of £1000 and £500, making together £1500, and the interest thereof further secured by a mortgage of the hereditaments intended to be hereby conveyed: NOW THIS INDENTURE WITNESSETH, that in consideration of the sum of £500 (*covenant to pay £500 and interest, suprà*, p. 515): AND THIS INDENTURE FURTHER WITNESSETH, that in consideration, &c., THE SAID A. B. hereby covenants with the said C. D. that the hereditaments comprised in the hereinbefore recited indenture shall stand charged, &c. (*further charge, see suprà*, p. 632): AND THIS INDENTURE ALSO WITNESSETH, that for the consideration aforesaid the said A. B. as beneficial owner hereby conveys unto the said C. D. ALL, &c.

Parties.

Recite former mortgage.

Agreement for further advance on having the same as well as the original mortgage debt secured on property comprised in first mortgage and by a mortgage of additional property.

Mortgagor conveys additional property to the mortgagee, in fee.

(*a*) This plan is to be preferred to the insertion of a general clause in either deed negativing sec. 17 of the Conveyancing Act, 1881. See *suprà*, p. 463.

FURTHER CHARGE AND MORTGAGE OF ADDITIONAL FREEHOLDS, BOTH PROPERTIES TO BE SECURITY FOR BOTH DEBTS.

(*parcels*), To HOLD the same unto and to the use of the said C. D. in fee simple: PROVIDED ALWAYS, that if the said sum of £1000 secured by the hereinbefore recited indenture and the interest thereof, and also the said sum of £500 hereinbefore covenanted to be paid and the interest thereof, shall be duly paid on the —— day of —— next, then and in such case the hereditaments hereby conveyed shall, at the request and cost of the said A. B., his heirs or assigns, be reconveyed to him or them. (*Declaration as to leasing power if desired, suprà*, p. 516.)

Proviso for redemption of both properties on payment of original mortgage debt and further advance.

IN WITNESS, &c.

No. LXXVI.

TRANSFER OF MORTGAGE OF FREEHOLDS.

TRANSFER *of a* MORTGAGE *of* FREEHOLDS, *without the* CONCURRENCE *of the* MORTGAGOR (*a*).

Parties.

THIS INDENTURE, made the —— day of ——, BETWEEN A. B., of, &c. (*mortgagee*), of the one part, and C. D., of, &c. (*transferee*), of the other part:

Recite mortgage.

WHEREAS by an indenture dated, &c., and made between G. H. (*mortgagor*), of the one part, and the said A. B. of the other part, the messuage, lands, and hereditaments known as —— farm, situate in, &c., particularly described in a schedule thereto (*b*) were conveyed by the said G. H. unto and to the use of the said A. B., in fee simple, by way of mortgage for securing the payment to him

Mortgagor should be made party to transfer.

(*a*) As a general rule, the mortgagor should be made a party to the transfer of the mortgage, in order to obtain his admission that the money remains owing.

Costs.

Where a mortgagee without the concurrence of the mortgagor, and without first calling on him to redeem, assigns his mortgage, he cannot add the costs of the transfer to his mortgage. (Radcliffe, *In re*, 2 Jur. N. S. 379.)

It is not necessary that the mortgage debt should be assigned on a transfer in order to retain its priority (Phillips *v.* Gutteridge, 4 De G. & J. 531); but it is always prudent to do so when the mortgagor is a party, in order to show that the transferee is depending on the old security. (Watts *v.* Symes, De G. Mac. & Gor. 240.)

(*b*) See note at p. 633, as to mode in which parcels should be described in a recital of a mortgage.

TRANSFER OF MORTGAGE OF FREEHOLDS.

the said A. B. of the sum of £——, with interest thereon, after the rate of £—— per centum per annum: AND WHEREAS the said principal sum of £—— remains owing to the said A. B., but all interest thereon has been paid up to the date of these presents: AND WHEREAS the said C. D. hath agreed to pay to the said A. B. the sum of ——, on having a transfer of the said mortgage in manner hereinafter mentioned: NOW THIS INDENTURE WITNESSETH, that in consideration of the sum of £—— to the said A. B. paid by the said C. D. on or before the execution of these presents (the receipt whereof the said A. B. hereby acknowledges), THE SAID A. B., as mortgagee, hereby assigns unto the said C. D., THE said principal sum of £—— secured by the hereinbefore recited indenture, and all interest henceforth to become due thereon, and the full benefit of all securities for the same (*c*): TO HOLD the same unto the said C. D., absolutely: AND THIS INDENTURE ALSO WITNESSETH, that for the consideration aforesaid, THE SAID A. B., as mortgagee, hereby conveys unto the said C. D., ALL the messuage, lands, hereditaments, and premises comprised in the hereinbefore recited indenture of mortgage: TO HOLD the same unto and to the use of the said C. D., in fee simple, subject to such right or equity of redemption as is now subsisting in the said premises under or by virtue of the hereinbefore recited indenture.

That mortgage debt is still due.

Agreement by transferee to pay the sum due on having transfer.

Assignment of mortgage debt and interest,

and the benefit of securities,

to transferee absolutely.

Conveyance of freeholds to transferee,

subject to equity of redemption.

IN WITNESS, &c.

A power of attorney is no longer necessary, as the debt passes at law, if notice is given to the mortgagor. See 36 & 37 Vict. c. 66, sec. 25, sub-sec. 6.

No. LXXVII.

TRANSFER OF MORTGAGE BY INDORSEMENT.

TRANSFER *of a* MORTGAGE *of* FREEHOLDS *without the* CONCURRENCE *of the* MORTGAGOR (*by indorsement*) (*a*).

Parties.

THIS INDENTURE, made, &c., BETWEEN the within-named A. B., of, &c. (*transferor*), of the one part, and C. D., of, &c. (*transferee*), of the other part: WHEREAS the principal sum of £—— secured by the within-written indenture remains owing to the said A. B., but all interest, &c. (*same as last Precedent to the end, substituting the words*, "the within-written indenture," *for* "the hereinbefore recited indenture," *throughout*).

IN WITNESS, &c.

No. LXXVIII.

STATUTORY TRANSFER.

STATUTORY TRANSFER *of a* MORTGAGE, MORTGAGOR NOT JOINING (*b*).

THIS INDENTURE, made by way of statutory transfer of mortgage, the —— day of ——, 188—, between A. B., of, &c.,

(*a*) If the transfer is written at the end of, instead of being indorsed on the mortgage, "above" should be substituted for "within" throughout. See p. 631, note.

(*b*) The above is form A. in the 3rd schedule to the Conveyancing and Law of Property Act, 1881, except that it supplies what is wanting in that form, viz., a short reference to the property comprised in the prior mortgage deed. With reference to a deed in the above form, it is provided by section 27 of the Act that it shall have effect as follows:—

(i.) There shall become vested in the person to whom the benefit of the mortgage is expressed to be transferred, who, with his executors, administrators, and assigns, is hereafter in this section designated the transferee, the right to demand, sue for, recover, and give receipts for the mortgage-money, or the unpaid part thereof, and the interest then due, if any, and thenceforth to become due thereon, and the benefit of all securities for the same, and the benefit of and the right to sue on all covenants with the mortgagee, and the right to exercise all powers of the mortgagee: (ii.) All the estate and interest, subject to redemption, of the mortgagee in the mortgaged land shall vest in the transferee, subject to redemption.

See the observations on the statutory mortgage form at p. 517, *suprà*, which observations apply also to the statutory transfer of mortgage forms.

STATUTORY TRANSFER.

of the one part, and C. D., of, &c., of the other part, supplemental to an indenture made by way of statutory mortgage, dated the —— day of ——, 1882, and made between, &c., being a mortgage of lands and hereditaments situate, &c., for securing the sum of £—— and interest, WITNESSETH, that in consideration of the sum of £—— now paid to the said A. B. by the said C. D., being the aggregate amount of £—— mortgage-money and £—— interest due in respect of the said mortgage, of which sum the said A. B. hereby acknowledges the receipt, the said A. B., as mortgagee, hereby conveys and transfers to C. D. the benefit of the said mortgage.

Transfer by transferor of benefit of mortgage.

IN WITNESS, &c.

No. LXXIX.

TRANSFER *of a* MORTGAGE *of* FREEHOLDS *where the* MORTGAGOR *joins.*

TRANSFER WHERE MORTGAGOR JOINS.

THIS INDENTURE, made the —— day of ——, BETWEEN A. B., of, &c. (*mortgagee*), of the first part, C. D., of, &c. (*mortgagor*), of the second part, and E. F., of, &c. (*transferee*), of the third part (*Recite mortgage of freeholds by C. D. to A. B.—that mortgage debt is still due, suprà*, pp. 636, 637): AND WHEREAS the said E. F., at the request of the said C. D., has agreed to pay to the said A. B. the sum of £—— on having a transfer of the said mortgage debt and the interest thereof, and the securities for the same, in manner hereinafter mentioned: NOW THIS INDENTURE, &c. (*Assignment of mortgage debt and interest, as in Precedent No. LXXIII., suprà*, p. 637): AND THIS INDENTURE ALSO WITNESSETH, that for the consideration aforesaid, the said A. B., as mortgagee, hereby conveys, and the said C. D. as beneficial owner, hereby conveys and confirms unto the said E. F., ALL the lands, hereditaments, and premises comprised in the hereinbefore recited indenture of mortgage: TO HOLD the same unto and to the use of the said E. F., in fee simple, subject to such right or equity of redemption as is now

Parties.

Recite agreement for transfer.

First witnessing part.

Transfer of mortgage debt.

Second witnessing part.

Mortgagee and mortgagor convey freeholds to transferee, subject to equity of redemption.

TRANSFER WHERE MORTGAGOR JOINS.

Mortgagor covenants with transferee to pay principal and interest.

subsisting therein by virtue of the hereinbefore recited indenture: AND the said C. D. hereby covenants with the said E. F. to pay the principal sum hereby assigned on the —— day of —— next, with interest thereon after the rate aforesaid and also so long after that day as the principal sum or any part thereof remains owing, to continue to pay interest thereon at the same rate upon the half-yearly days appointed for payment thereof by the hereinbefore recited indenture.

IN WITNESS, &c.

No. LXXX.

STATUTORY TRANSFER, COVENANTOR JOINING.

DEED *of* STATUTORY TRANSFER, *a* COVENANTOR JOINING (*a*).

THIS INDENTURE, made by way of statutory transfer of mortgage the —— day of ——, 188—, between A. B., of, &c., of the first part, C. D., of, &c., of the second part, and E. F., of, &c., of the third part, supplemental to an indenture made by way of statutory mortgage, dated the —— day of ——, 1882, and made between, &c., being a mortgage of lands and hereditaments situate at, &c., for securing £—— and interest, WITNESSETH, that in consideration of the sum of £—— now paid to the said A. B. by the said E. F., being the mortgage-money due in respect of the said mortgage, no interest being now due

(*a*) The above is form (B) in the 3rd Schedule to the Act, with an addition referring to the property comprised in the mortgage in order to supply the defect of the form in this respect. With reference to a deed in this form, it is provided by the 27th section that there shall also be deemed to be included, and there shall by virtue of the Act be implied therein, a covenant with the transferee by the person expressed to join therein as covenantor to the effect following (namely): "That the covenantor will, on the next of the days by the mortgage deed fixed for payment of interest, pay to the transferee the stated mortgage-money, or so much thereof as then remains unpaid, with interest thereon, or on the unpaid part thereof, in the meantime, at the rate stated in the mortgage deed; and will thereafter, as long as the mortgage-money, or any part thereof, remains unpaid, pay to the transferee interest on that sum, or the unpaid part thereof, at the same rate, on the successive days by the mortgage deed fixed for payment of interest."

and payable thereon, of which sum the said A. B. hereby acknowledges the receipt, the said A. B., as mortgagee, with the concurrence of the said C. D., who joins herein as covenantor, hereby conveys and transfers to E. F. the benefit of the said mortgage.

STATUTORY TRANSFER, COVENANTOR JOINING.

IN WITNESS, &c.

No. LXXXI.

TRANSFER *of* MORTGAGE *by the* PERSONAL REPRESENTATIVES (*a*) *of the* SURVIVOR *of* TWO MORTGAGEES *by deed* INDORSED ON *or* WRITTEN AT THE END *of the mortgage.*

TRANSFER OF MORTGAGE BY PERSONAL REPRESENTATIVES OF MORTGAGEE.

THIS INDENTURE, made the —— day of——, BETWEEN A. B., of, &c., and C. D., of, &c. (*personal representatives of mortgagee*), of the first part, E. F., of, &c. (*mortgagor*), of the second part, and G. H., of, &c. (*transferee*), of the third part: WHEREAS the within [or above] named L. M. died on the —— day of ——, 18—, and the within [or above] named N. O. died on the —— day of ——, 1882, having made his will dated, &c., and thereby appointed the said A. B. and C. D. to be the executors thereof, who duly proved the same in the Probate Registry at —— of the High Court of Justice on the —— day of ——: AND WHEREAS the principal sum of £—— secured by the within [or above] written indenture of mortgage still remains owing, but all interest thereon has been paid up to the date of these presents: AND WHEREAS the said G. H. has agreed, at the request of the said E. F., to pay the sum of £—— to the said A. B. and C. D., upon having a transfer of the said mortgage in the manner hereinafter expressed: NOW THIS INDENTURE WITNESSETH, that in consideration of the sum of £—— now paid to the said A. B. and C. D. by the said G. H. (the receipt whereof the said A. B. and C. D. hereby acknowledge), the said A. B. and C. D., as the personal representatives of the said N. O.,

Parties.

Recital of deaths of mortgagees and will of survivor.

That principal money remains due.

Agreement for transfer.

Transfer of principal money and interest.

(*a*) See Conveyancing Act, sect. 30.

TRANSFER OF MORTGAGE BY PERSONAL REPRESENTATIVES OF MORTGAGEE.

deceased, hereby assign unto the said G. H., &c. (*transfer of principal sum and interest, and benefit of securities to* G. H. *absolutely, suprà*, p. 637): AND THIS INDENTURE ALSO WITNESSETH, that for the consideration aforesaid the said A. B. and C. D., as such personal representatives as aforesaid, hereby convey, and the said E. F., as beneficial owner, hereby conveys and confirms, &c. (*Conveyance of mortgaged property to* G. H., *subject to equity of redemption, suprà*, p. 637).

Conveyance of mortgaged property.

IN WITNESS, &c.

No. LXXXII.

OF MORTGAGE OF FREEHOLDS WHERE FURTHER SUM IS ADVANCED.

TRANSFER *of* MORTGAGE *of* FREEHOLDS *where a* FURTHER SUM *is advanced to the* MORTGAGOR.

THIS INDENTURE, made the —— day of ——, BETWEEN A. B., of, &c. (*transferor*), of the first part, C. D., of, &c. (*mortgagor*), of the second part, and E. F., of, &c. (*transferee*), of the third part (*Recite mortgage of freeholds which are referred to as "the hereditaments intended to be hereby conveyed" to secure* £500 *and interest*): AND WHEREAS the said principal sum of £500 remains owing to the said A. B., but all interest thereon has been paid up to the date of these presents: AND WHEREAS the said E. F. hath agreed, at the request of the said C. D., to pay to the said A. B. the sum of £500, on having a transfer of the said mortgage, and to lend to the said C. D. the further sum of £200, on having the repayment thereof, as well as of the said sum of £500, with interest for the same respectively, secured in the manner hereinafter expressed: NOW THIS INDENTURE WITNESSETH, that in consideration of the sum of £500 to the said A. B. now paid by the said E. F. (*the receipt, &c.*), the said A. B., as mortgagee, hereby assigns unto the said E. F., THE SAID principal sum of £500 secured by the hereinbefore recited indenture and the future interest thereof, and the benefit of all securities for the same: TO HOLD the same unto the said E. F. absolutely: AND THIS INDENTURE FURTHER

Parties.

Recite that mortgage debt is still due.

Agreement for transfer and for making further advance.

Consideration to mortgagee.

Assignment of mortgage debt.

OF MORTGAGE OF FREEHOLDS WHERE FURTHER SUM IS ADVANCED.

WITNESSETH, that in consideration of the said sum of £500 paid by the said E. F. to the said A. B. as aforesaid, and also in consideration of the sum of £200 to the said C. D. at the same time paid by the said E. F. (the receipt of which sum of £200 the said C. D. hereby acknowledges), he the said C. D. hereby covenants with the said E. F., to pay to him, on the —— day of —— next, the sum of £700 with interest thereon in the meantime after the rate of £—— per cent. per annum, computed from the date of these presents, and also, &c. (*to pay interest half-yearly, suprà*, p. 515): AND THIS INDENTURE ALSO WITNESSETH, that for the consideration aforesaid the said A. B., as mortgagee, hereby conveys, and the said C. D., as beneficial owner, hereby conveys and confirms unto the said E. F., ALL, &c. (*parcels*), TO HOLD the same unto and to the use of the said E. F., in fee simple, freed from all right or equity of redemption by virtue of the said recited indenture, but subject to the following proviso (namely), PROVIDED ALWAYS, that if the sum of £700, with interest thereon, shall be paid on the —— day of —— next, according to the foregoing covenant in that behalf, then and in such case the said premises shall at the request and cost of the said C. D., his heirs or assigns, be reconveyed to him or them (*Covenant by C. D. for insurance, if applicable, suprà*, p. 516).

Covenant by mortgagor to pay aggregate sum, and interest

Conveyance to transferee, subject to proviso for redemption.

IN WITNESS, &c.

No. LXXXIII.

TRANSFER *of* MORTGAGE *of* FREEHOLDS *where a* FURTHER SUM *is advanced to the* MORTGAGOR (*by deed indorsed on or written at the end of the mortgage*).

TRANSFER WHERE FURTHER SUM IS ADVANCED, INDORSED OR WRITTEN AT END.

THIS INDENTURE, made the —— day of ——, BETWEEN the within- [*or* above-] named A. B. (*transferor*), of the first part, the within- [*or* above-] named C. D. (*mortgagor*), of the second part, and E. F., of, &c. (*transferee*) of the third part: WHEREAS the principal sum of £500 secured by the within- [*or* above-] written indenture remains owing but all

Parties.

Recite that mortgage debt remains due.

TRANSFER WHERE FURTHER SUM IS ADVANCED, INDORSED OR WRITTEN AT END.

interest thereon has been paid up to the date of these presents: (*Recite agreement for transfer and new advance as in last Precedent*). NOW THIS INDENTURE WITNESSETH, that, &c. (*Transfer of mortgage debt as in last Precedent, substituting the "within-written," or "the above-written indenture," for "the hereinbefore recited indenture"*): AND THIS INDENTURE FURTHER WITNESSETH, that in further pursuance of the said agreement, and in consideration of, &c. (*Covenant by C. D. to pay aggregate principal sum and interest as in last Precedent*): AND THIS INDENTURE ALSO WITNESSETH, that for the consideration aforesaid the said A. B., as mortgagee, hereby conveys, and the said C. D., as beneficial owner, hereby conveys and confirms, unto the said E. F., ALL the lands and hereditaments comprised in the within- [*or* above-] written indenture. TO HOLD the same unto and to the use of the said E. F., in fee simple, freed from all right or equity of redemption under the within-written indenture, but subject to the following proviso (namely): PROVIDED ALWAYS, that if the sum of £700 with interest thereon shall be paid on the —— day of ——, according to the foregoing covenant in that behalf, the premises shall, at the request of the said C. D., his heirs or assigns, be reconveyed to him or them.

Transfer of mortgage debt, &c.

Conveyance by transferor and confirmation by mortgagor of hereditaments.

To transferee.

Proviso for redemption.

IN WITNESS, &c.

No. LXXXIV.

STATUTORY TRANSFER *and* STATUTORY MORTGAGE *combined* (*a*).

STATUTORY TRANSFER AND STATUTORY MORTGAGE.

THIS INDENTURE, made by way of statutory transfer of mortgage and statutory mortgage the —— day of ——, 1883,

(*a*) This is form (C) in the 3rd Schedule to the Act, with respect to which sect. 27 provides that if the deed of transfer is made in the form (C), it shall, by virtue of the Act, operate not only as a statutory transfer of mortgage, but also as a statutory mortgage, and the provisions of this section shall have effect in relation thereto accordingly; but it shall not be liable to any increased stamp duty by reason only of it being designated a mortgage.

between A. B., of, &c., of the first part, C. D., of, &c., of the second part, and E. F., of, &c., of the third part, supplemental to an indenture made by way of statutory mortgage dated the —— day of ——, 1882, and made between, &c., being a mortgage of lands and hereditaments, situate at, &c., for securing the sum of £—— and interest: WHEREAS the principal sum of £—— only remains due in respect of the said mortgage as the mortgage-money, and no interest is now due and payable thereon: AND WHEREAS the said C. D. is seised in fee simple of the land comprised in the said mortgage, subject to that mortgage: NOW THIS INDENTURE WITNESSETH, that in consideration of the sum of £—— now paid to the said A. B. by the said E. F., of which sum the said A. B. hereby acknowledges the receipt, and the said C. D. hereby acknowledges the payment and receipt as aforesaid (*b*), the said A. B., as mortgagee, hereby conveys and transfers to the said E. F. the benefit of the said mortgage: AND THIS INDENTURE ALSO WITNESSETH, that for the same consideration the said A. B., as mortgagee, and according to his estate, and by direction of the said C. D., hereby conveys, and the said C. D., as beneficial owner, hereby conveys and confirms to the said E. F., All, &c., TO HOLD to and to the use of the said E. F., in fee simple, for securing payment on the —— day of ——, 18—, of (*c*) the sum of £——, as the mortgage-money, with interest thereon at the rate of [*four*] per centum per annum.

STATUTORY TRANSFER AND STATUTORY MORTGAGE.

Transfer of benefit of mortgage.

and conveyance of parcels to transferee.

IN WITNESS, &c.

[*Or in case of further advance, after* aforesaid *at* (*b*) *insert* and also in consideration of the further sum of £—— now paid by E. F. to C. D., of which sum C. D. hereby acknowledges the receipt, *and after* of *at* (*c*) *insert* the sums of £—— and £—— making together]

*** Variations to be made, as required, in case of the deed being made by indorsement, or in respect of any other thing.

No. LXXXV.

TRANSFER OF MORTGAGE OF COPYHOLDS WITH CONCURRENCE OF MORTGAGOR.

TRANSFER *of a* MORTGAGE *of* COPYHOLDS, *with the* CONCURRENCE *of the* MORTGAGOR (*a*) (*by indorsement*) (*b*).

Parties.

THIS INDENTURE, made, &c., BETWEEN the within-named A. B. (*mortgagee*), of the first part, the within-named C. D. (*mortgagor*), of the second part, and E. F., of, &c. (*transferee*), of the third part:

Recite conditional surrender to mortgagee.

WHEREAS in pursuance of the covenant in that behalf contained in the within-written indenture, the said C. D. did on the —— day of ——, out of court surrender into the hands of the lord of the said manor the within-described copyhold hereditaments, to the use of the said A. B., his heirs and assigns, subject to a condition for making void the said surrender upon payment to the said A. B. of the sum of £—— with interest for the same, after the rate of £—— per cent. per annum, on the —— day of —— then next:

That mortgagee has not been admitted.

AND WHEREAS the said A. B. has not been admitted tenant to the said copyhold hereditaments pursuant to the said surrender:

AND WHEREAS (*Recite that mortgage debt is due, and agreement for transfer, suprà*, p. 637):

Transfer of mortgage debt.

NOW THIS INDENTURE WITNESSETH, that in consideration, &c. (*Assignment of mortgage debt, &c., by A. B. to E. F., suprà*, p. 637):

Mortgagor covenants to

AND THIS INDENTURE ALSO WITNESSETH that for the consideration aforesaid, the said C. D., as beneficial owner, hereby covenants with the said E. F., that he the said C. D. will forthwith, at his own cost, surrender, or cause to be surrendered, into the hands of the lord

Proper mode of transferring copyholds.

(*a*) Where the concurrence of the mortgagor can be obtained, and the mortgagee has not been admitted on the conditional surrender, the proper mode of effecting a transfer of a mortgage of copyholds is by entering up satisfaction on the former conditional surrender, and having a new conditional surrender to the transferee. If, by reason of the disability of the mortgagor, or any other reason, his concurrence cannot be obtained, the only mode of effecting a transfer seems to be that adopted in Precedent No. LXXXVIII., *infrà*, unless the transferee is willing to allow the right to admittance on the old conditional surrender to remain vested in the transferor as a trustee for him until a new conditional surrender can be obtained from the mortgagor.

(*b*) If the transfer is written at the end of the mortgage, substitute "above" for "within" throughout.

of the said manor, according to the custom of the said manor, ALL the copyhold hereditaments comprised in and covenanted to be surrendered by the within-written indenture: TO THE USE of the said E. F., in customary fee simple, according to the custom of the said manor, by and under the rents, heriots, suits, and services therefor due and of right accustomed, subject to a condition for making void the said surrender upon payment to the said E. F., on the —— day of —— next, of the said sum of £——, with interest for the same after the rate of £—— per cent. per annum, computed from the date of these presents: AND IT IS HEREBY AGREED AND DECLARED, that satisfaction shall be entered up on the said conditional surrender of the —— day of —— at the cost of the said C. D.

IN WITNESS, &c.

TRANSFER OF MORTGAGE OF COPYHOLDS WITH CONCURRENCE OF MORTGAGOR.

surrender copyholds to use of transferee, subject to condition for redemption.

Agreement for entering up satisfaction on former conditional surrender

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No. LXXXVI.

WARRANT *to* ENTER *up* SATISFACTION *of* CONDITIONAL SURRENDER.

WARRANT TO ENTER UP SATISFACTION.

MANOR *of* ——, *in the County of* —— } I, A. B., of, &c., DO HEREBY ACKNOWLEDGE that I have this day received of and from E. F., of, &c., by the direction of C. D., of, &c., the sum of £——, in satisfaction of all principal moneys and interest secured by a conditional surrender made to me by the said C. D. of certain copyhold hereditaments held of the said manor, and bearing date the —— day of ——; and I do hereby direct and require the steward of the said manor to enter up satisfaction thereof on the court rolls of the said manor, and for so doing this shall be his sufficient warrant and authority. DATED this —— day of ——.

(Signed) A. B.

No. LXXXVII.

CONDITIONAL SURRENDER ON TRANSFER.

CONDITIONAL SURRENDER *by* MORTGAGOR *to* TRANSFEREE *of* MORTGAGE.

MANOR *of* ——, *in the county of* ——. } BE IT REMEMBERED, that on this —— day of ——, 18—, C. D., of, &c., comes before X. Y., of, &c., steward of the said manor, out of court, and in consideration of the sum of £—— paid by E. F., of, &c., to A. B., of, &c., by the direction of him the said C. D., in satisfaction of all principal moneys and interest secured to the said A. B. by a conditional surrender of the copyhold hereditaments hereinafter described, which conditional surrender is dated the —— day of ——, 18—, surrenders into the hands of the lord of the said manor, by the hands and acceptance of the said steward, according to the custom of the said manor, ALL, &c. (*parcels*): To THE USE of the said E. F. and his heirs, at the will of the lord, according to the custom of the said manor, by and under the rents, suits, and services therefor due and of right accustomed: SUBJECT NEVERTHELESS to this condition, that if the said C. D., shall, on the —— day of —— next, pay to the said E. F., the sum of £——, with interest for the same after the rate of £— per cent. per annum, computed from the date of this surrender, then and in such case this surrender shall be void and of no effect, but otherwise shall remain in full force and virtue.

This surrender was taken and accepted the day and year above-written, by me

(Signed) X. Y. (steward),
Steward of the manor.

No. LXXXVIII.

TRANSFER *of* MORTGAGE *of* COPYHOLDS.—*The* MORTGAGOR *being dead*, LEAVING *an* INFANT HEIR, *his* WIDOW *and* ADMINISTRATRIX JOINS *in the* TRANSFER (*by Indorsement, or by deed written at the end of the mortgage*). OF COPYHOLDS WITH CONCURRENCE OF ADMINISTRATRIX OF MORTGAGOR.

THIS INDENTURE, made, &c., BETWEEN the within-named [*or* above-named] A. B. (*mortgagee*), of the first part, C. D., of, &c. (*administratrix of mortgagor*), of the second part, and E. F., of, &c. (*transferee*), of the third part: WHEREAS (*Recite conditional surrender by X. Y. to A. B., and that A. B. has not been admitted, suprà*, p. 646): AND WHEREAS the said X. Y. died on the —— day of —— intestate, leaving the said C. D. his widow, and N. O. his only son and heir at law, and the said N. O. is under the age of twenty-one years: AND WHEREAS letters of administration of the estate and effects of the said X. Y. were, on the —— day of ——, granted to the said C. D. by the Probate Registry at —— of the High Court of Justice: AND WHEREAS the principal sum of £——, secured by the within-written [*or* above-written] indenture, still remains due, but all interest thereon has been duly paid up to the date of these presents: AND WHEREAS the said A. B. lately applied to the said C. D. to pay to him the said sum of £——, and the said C. D., not having moneys in her hands available for such purpose, hath requested the said E. F. to pay the same upon having a transfer of the said mortgage, in the manner hereinafter mentioned, which the said E. F. has agreed to do: NOW, &c. (*Assignment of mortgage debt by A. B. to E. F., suprà*, p. 637): AND THIS INDENTURE ALSO WITNESSETH, that for the consideration aforesaid, the said A. B., as mortgagee, hereby covenants with the said E. F., THAT he the said A. B. will forthwith, at the cost of the said C. D., or of the estate of the said X. Y., deceased, procure himself to be admitted tenant to the copyhold hereditaments described in the within- [*or* above-] written indenture pursuant to the said surrender of the —— day of ——, and will as soon as conveniently

Parties.

Recite conditional surrender to use of mortgagee, and that he has not been admitted.

Death of mortgagor intestate.

Administration granted to mortgagor's widow.

That mortgage-money remains due.

Agreement for transfer.

First witnessing part.

Transfer of debt.

Second witnessing part.

Covenant by mortgagee to procure himself to be admitted,

OF COPYHOLDS WITH CONCURRENCE OF ADMINISTRATRIX OF MORTGAGOR.

and after admittance to surrender to use of transferee, subject to right of redemption, and in the meantime to stand seised of said copyhold premises in trust for transferee.

can be after such admittance, at the like cost, surrender the same copyhold hereditaments into the hands of the lord of the said manor, To THE USE of the said E. F. in customary fee simple, according to the custom of the said manor, at and under the rents, suits, and services therefor due and of right accustomed, subject to such right or equity of redemption as is now subsisting in the said hereditaments by virtue of the said conditional surrender, dated the —— day of ——, and the within-written indenture: AND WILL in the meantime, and until such surrender, stand and be seised and possessed of the said copyhold hereditaments, IN TRUST for the said E. F. in customary fee simple, subject as aforesaid.

IN WITNESS, &c.

No. LXXXIX.

ADMISSION AND SURRENDER ON TRANSFER.

ADMISSION *of* MORTGAGEE *to* COPYHOLDS, *and* SURRENDER *to* TRANSFEREE, PURSUANT *to the* COVENANT *in the* LAST PRECEDENT, *and* ADMISSION *of* TRANSFEREE.

Recite conditional surrender to use of mortgagee.

THE MANOR *of* ——, *in the county of* ——. WHEREAS on the —— day of ——, 18—, X. Y. of, &c., one of the copyhold tenants of this manor, came before P. Q., steward of the said manor, out of court, and in consideration of the sum of £—— to the said X. Y. paid by A. B. of, &c., the said X. Y. surrendered into the hands of the lord of the said manor, ALL, &c. (*parcels*), with their appurtenances, to the use of the said A. B., his heirs and assigns, according to the custom of the said manor, by and under the rents, heriots, suits, and services therefor due and of right accustomed, subject nevertheless to a condition for making void the said surrender upon payment by the said X. Y., unto the said A. B., of the sum of £——, with interest for the same after the rate of £—— per cent. per annum, on the —— day of —— then next: AND WHEREAS

ADMISSION AND SURRENDER ON TRANSFER.

default was made in payment of the said principal sum of £——, on the day mentioned in the said condition, and the same principal sum still remains due and owing to the said A. B., but all interest for the same has been paid up to this day: NOW BE IT REMEMBERED, that on this —— day of——, 18—, the said A. B. comes before the said P. Q. out of court and prays to be admitted tenant to the said copyhold hereditaments surrendered to his use as aforesaid, To which said copyhold hereditaments the lord of the said manor by the said steward grants seisin thereof by the rod, To HOLD the same unto the said A. B. and his heirs, at the will of the lord, according to the custom of the said manor, at and under the rents, suits, and services therefor due and of right accustomed, And so (saving the right of the lord and the right of any person or persons having an equity of redemption in the said hereditaments) the said A. B. is admitted tenant thereof and pays to the lord on such his admittance a fine certain of £——, and his fealty is respited: AND BE IT FURTHER REMEMBERED, that on this —— day of ——, 18—, the said A. B. comes before the said steward out of Court, and in consideration of the sum of £—— paid to him by E. F. of, &c., in satisfaction of the said principal sum of £—— due and owing on the said conditional surrender as aforesaid, surrenders into the hands of the lord of the said manor, by the hands and acceptance of his said steward, according to the custom of the said manor, ALL the copyhold hereditaments to which he the said A. B. was admitted as aforesaid, with their appurtenances, to the use of the said E. F., and his heirs, at the will of the lord according to the custom of the said manor, and at and under the rents, suits, and services therefor due and of right accustomed, subject nevertheless to such equity of redemption as is now subsisting in the said premises under the aforesaid conditional surrender of the —— day of ——, 18—: AND BE IT FURTHER REMEMBERED, that on this —— day of ——, 18—, the said E. F. comes before the said steward out of court and prays to be admitted, &c. (*Admission of E. F. in the same form as the admission of A. B., suprà.*)

That default was made.

Mortgagee prays to be admitted.

Grant to, and admittance of, mortgagee.

Mortgagee surrenders.

to use of transferee,

subject to right of redemption.

Admittance of transferee.

No. XC.

OF MORTGAGE OF FREEHOLDS AND COPYHOLDS WHERE NO SURRENDER HAS BEEN MADE.

TRANSFER *of* MORTGAGE *of* FREEHOLDS *and of* COPYHOLDS *where* NO SURRENDER *has been* MADE (*by Indorsement or by deed written at the end of the mortgage*).

Parties.

THIS INDENTURE, made the —— day of ——, BETWEEN the within- [*or* above-] named A. B. (*mortgagee*), of the first part, the within- [*or* above-] named C. D. (*mortgagor*), of the second part, and E. F. of, &c. (*transferee*), of the third part:

Recite that no surrender has been made.

WHEREAS no surrender has been made of the copyhold hereditaments comprised in the within- [*or* above-] written indenture pursuant to the covenant therein contained (*Recite that principal sum remains owing, and agreement for transfer, suprà*, p. 637):

First witnessing part.

NOW THIS INDENTURE WITNESSETH, that, &c. (*Assignment of mortgage debt, &c., by A. B. to E. F., suprà*, p. 637):

Transfer of mortgage debt.

Second witnessing part.

AND THIS INDENTURE ALSO WITNESSETH, that for the consideration aforesaid, the said A. B., as mortgagee, at the request of the said C. D. hereby conveys unto the said E. F., ALL the freehold and copyhold hereditaments conveyed and covenanted to be surrendered respectively by the within- [*or* above-] written indenture, TO HOLD the same unto and to the use of the said E. F., in fee simple, subject to such right or equity of redemption as is now subsisting therein under the within- [*or* above-] written indenture, and to the intent that, as regards the said copyhold hereditaments, the same shall be surrendered to the use of the said E. F., in customary fee simple, pursuant to the covenant in that behalf contained in the said indenture:

Conveyance of freeholds and copyholds,

to transferee subject to equity of redemption.

Time for payment to be extended to a day specified.

PROVIDED ALWAYS and it is hereby declared that the time for payment of the said principal sum hereby assigned shall be extended to the —— day of —— next, and that the within- [*or* above-] written indenture and these presents shall henceforth take effect as if the said principal sum had been made payable by the said indenture on the said —— day of —— next, instead of on the day therein named in that behalf.

IN WITNESS, &c.

No. XCI.

TRANSFER *of a* MORTGAGE *of a* POLICY *of* ASSURANCE *and a sum of* STOCK, *in which the* MORTGAGOR *joins for the purpose of securing the payment of the* DEBT *by a charge on* ADDITIONAL PROPERTY.

TRANSFER OF MORTGAGE OF POLICY, ETC., THE DEBT ADDITIONALLY SECURED BY THE MORTGAGOR.

THIS INDENTURE, made the —— day of ——, BETWEEN A. B. of, &c. (*mortgagee*), of the first part, C. D. of, &c. (*mortgagor*), of the second part, and E. F. of, &c. (*transferee*), of the third part: WHEREAS (*Recite policy of assurance on the life of C. D. to secure the payment of* £100 *to his representatives on his death*): AND WHEREAS under an indenture dated, &c., and made between (*parties*), the said C. D. became entitled to a certain sum of £—— £3 per cent. Consolidated Annuities, standing in the names of —— and —— in the books of the Governor and Company of the Bank of England as trustees thereof, expectant on the death of X. Y., of, &c.: AND WHEREAS by an indenture of mortgage dated, &c., and made between the said C. D. of the one part, and the said A. B. of the other part, the said C. D., in consideration of the sum of £500 paid to him by the said A. B., did assign the said policy of assurance and the moneys thereby assured, and the said sum of £—— £3 per cent. Consolidated Annuities so expectant as aforesaid, and the interest and dividends thereof respectively, unto the said A. B., by way of security for the payment by the said C. D., unto the said A. B., of the sum of £500, and interest thereon after the rate of £4 per cent. per annum, as therein mentioned: AND WHEREAS the said sum of £500 is still due and owing on the security of the said recited indenture of mortgage, but all interest thereon hath been paid up to the date of these presents: AND WHEREAS under or by virtue of the last will of G. H., late of, &c., deceased, dated the —— day of ——, the said C. D. is entitled to a certain annuity of £40 during his

Parties.

Recite indenture under which mortgagor became interested in a reversionary share in stock.

Mortgage of policy and stock.

That principal sum is still due.

Will under which mortgagor

TRANSFER OF MORTGAGE OF POLICY, ETC., THE DEBT ADDITIONALLY SECURED BY THE MORTGAGOR.

as entitled to a rentcharge.

Agreement for transfer.

life, which is charged upon an estate situate, &c., which by the said will was devised to —— in fee simple: AND WHEREAS the said A. B. having occasion for the said sum of £500, the said E. F. hath at the request of the said C. D. agreed to pay the same to the said A. B., on having a transfer of the said mortgage in manner hereinafter mentioned, and also on having the payment of the said mortgage debt and the interest thereof further secured as hereinafter mentioned: NOW THIS INDENTURE WITNESSETH, that in consideration of the sum of £500 to the said A. B. now paid by the said E. F. at the request of the said C. D., THE said A. B., as mortgagee, hereby assigns (*Assignment of mortgage debt, &c., to E. F., suprà*, p. 637). AND THIS INDENTURE FURTHER WITNESSETH, that for the consideration aforesaid, THE said A. B., as mortgagee, at such request as aforesaid, hereby assigns, and the said C. D., as beneficial owner, hereby assigns and confirms unto the said E. F., THE hereinbefore recited policy of assurance, and the moneys, bonuses, and advantages thereby assured or to become payable thereunder, and also the said sum of £—— £3 per cent. Consolidated Annuities, and the dividends and annual income thereof respectively: To HOLD the same (subject, nevertheless, as to the said sum of £—— £3 per cent. Consolidated Annuities to the interest of the said X. Y. therein as aforesaid), unto the said E. F., subject to such right or equity of redemption as is now subsisting therein by virtue of the hereinbefore recited indenture of mortgage: AND THIS INDENTURE ALSO WITNESSETH, that for the consideration aforesaid, the said C. D., as beneficial owner, hereby conveys and assigns unto the said E. F., THE said annuity of £40 to which the said C. D. is entitled during his life under the said will of the said G. H. as aforesaid, and all sums now due and henceforth to become due on account thereof, and all powers and remedies for securing, recovering, and enforcing payment thereof: To HOLD the same unto the said E. F., subject to the same or the like right of redemption as is now subsisting in the said policy of assurance, and sum of £—— £3 per cent. Consolidated Annuities, and with and under the same or the like powers and privileges as are in and by the

Assignment of mortgage debt

Assignment of policy and stock,

to transferee subject to equity of redemption.

Mortgagor assigns annuity

to transferee, subject to right of redemption, &c.

hereinbefore recited indenture of mortgage conferred upon the said A. B., in relation to the said policy of assurance and sum of £—— £3 per cent. Consolidated Annuities respectively.

IN WITNESS, &c.

TRANSFER OF MORTGAGE OF POLICY, ETC., THE DEBT ADDITIONALLY SECURED BY THE MORTGAGOR.

No. XCII.

TRANSFER *of* MORTGAGE *of* FREEHOLDS *and* LEASEHOLDS *on the Change of one of* TWO TRUSTEES.

TRANSFER ON CHANGE OF TRUSTEES.

THIS INDENTURE, made, &c., BETWEEN A. B. of, &c., and C. D. of, &c. (*transferors*), of the one part, the said C. D. and E. F. of, &c. (*transferees*), of the other part, (*Recite mortgage of freeholds and leaseholds to A. B. and C. D. to secure* £1000): AND WHEREAS the said sum of £1000 is still owing on the security of the said recited indenture, but all interest thereon has been paid up to the date of these presents: AND WHEREAS the said C. D. and E. F. have now become entitled to the said principal sum of £1000 upon a joint account, and in consequence thereof the said A. B. and C. D. have agreed to make such transfer to them of the said mortgage as is hereinafter expressed: NOW THIS INDENTURE WITNESSETH, that in consideration of the premises, THE SAID A. B. and C. D. as mortgagees hereby assign unto the said C. D. and E. F. (*a*): (*Assignment of mortgage debt, &c., suprà*, p. 637): TO HOLD the same unto the said C. D. and E. F.: AND THIS INDENTURE FURTHER WITNESSETH, that in consideration of the premises, THE said A. B. and C. D. as mortgagees hereby convey unto the said C. D. and E. F. (*a*), ALL the freehold messuages, lands, and hereditaments comprised in the hereinbefore recited indenture: TO HOLD the same unto and to the

Parties.

Recite mortgage to transferors, that principal sum is still due.

That transferors have become entitled, and agree to transfer.

Transfer of mortgage debt.

Conveyance of parcels to use of transferees, subject to subsisting right of redemption.

(*a*) By sect. 50 of the Conveyancing Act, 1881, it is provided that freehold land, or a thing in action, may be conveyed by a person to himself jointly with another person by the like means by which it might be conveyed by him to another person.

Freeholds and things in action may be conveyed by a person to himself and another.

TRANSFER ON CHANGE OF TRUSTEES.

use of the said C. D. and E. F., in fee simple, subject to such right or equity of redemption as is now subsisting in the said premises under or by virtue of the said recited indenture: AND THIS INDENTURE ALSO WITNESSETH, that in consideration of the premises, the said A. B. and C. D. as mortgagees, hereby assign unto the said C. D. and E. F. (*b*), ALL the leasehold hereditaments and premises comprised in the hereinbefore recited indenture: TO HOLD the same unto the said C. D. and E. F. for all the residue now unexpired of the said term granted therein by the hereinbefore recited indenture, subject to such right or equity of redemption as is now subsisting therein by virtue of the same indenture.

Assignment of leaseholds

to transferees for residue of term.

IN WITNESS, &c.

No. XCIII.

TRANSFER OF PART OF MORTGAGE.

TRANSFER *of* PART *of* MONEY *secured by* MORTGAGE, *and* CONVEYANCE *of the* MORTGAGED PROPERTY, *so as to vest in* TRANSFEROR *and* TRANSFEREE *jointly* (*a*).

Parties.

THIS INDENTURE, made the —— day of ——, 18—, between the within-named A.B. (*mortgagee*), of the one part, and C. D., of, &c. (*transferee*), of the other part, WITNESSETH, that in consideration of the sum of £500 now paid to the said A. B. by the said C. D. (the receipt whereof the said A. B. hereby acknowledges), THE said A. B., as mortgagee, hereby assigns unto the said C. D. THE sum of £500, part of the principal sum of £2000 secured by the within-written indenture:

Mortgagee assigns part of mortgage debt to transferee,

(*b*) By the 22 & 23 Vict. c. 35, s. 21, it is provided that any person shall have power to assign personal property by law assignable, including chattels real, directly to himself and another person or persons, or corporation, by the like means as he might assign the same to another person.

(*a*) Sometimes the transferee of part is satisfied with a declaration of trust from the mortgagee, without any conveyance of the mortgaged property to vest in the two jointly.

AND all interest henceforth to become due on the said sum of £500: TO HOLD the same unto the said C. D. absolutely: AND THIS INDENTURE ALSO WITNESSETH, that for the consideration aforesaid the said A. B., as mortgagee, hereby conveys unto the said A. B. and C. D., All the hereditaments comprised in the within written indenture: TO HOLD the same unto and to the use of the said A. B. and C. D., in fee simple, subject to such right or equity of redemption as is now subsisting therein under the within written indenture, upon payment to the said C. D. of the said sum of £500 and interest hereby assigned, and to the said A. B. of the sum of £1500 (residue of the said principal sum of £2000), and the interest thereof.

TRANSFER OF PART OF MORTGAGE.

and conveys mortgaged property to himself and transferee jointly, subject to equity of redemption.

IN WITNESS, &c.

No. XCIV.

TRANSFER *of* PART *of* MONEY *secured on a* CONTRIBUTORY MORTGAGE *where the* TRANSFEROR *holds a* DECLARATION *of* TRUST *executed to him by the* MORTGAGEES (*written at the foot of the declaration of trust*).

TRANSFER OF PART OF MONEY SECURED BY CONTRIBUTORY MORTGAGE.

KNOW ALL MEN by these presents that I, the above-named A. B., in consideration of the sum of £—— now paid to me by C. D., of, &c. (the receipt whereof I hereby acknowledge) do hereby assign unto the said C. D. the principal sum of £—— to which I am entitled under the above-written indenture and the declaration of trust thereby made: AND all interest henceforth to become due thereon: TO HOLD the same unto the said C. D. absolutely: And I hereby covenant with the said C. D. that I have not received any part of the said sum of £——, and have not done anything whereby I am prevented from assigning the same to him in manner aforesaid.

IN WITNESS, &c.

No. XCV.

TRANSFER OF SEVERAL MORTGAGE DEBTS AND THEIR SECURITIES, AND ADDITIONAL PROPERTY CHARGED WITH OLD AND FURTHER ADVANCE.

TRANSFER *of* Two *several* Mortgage Debts *and the* Securities *for* Each, *and* Conveyance *of* Additional Property *by* Mortgagor *to the intent that all the* Property *vested in* Transferee *may be a* Security *for both* Mortgage Debts *and a* Further Advance.

THIS INDENTURE, made the —— day of ——, Between A. B. of, &c. (*transferor of the first mortgage*) of the first part, C. D. of, &c. (*transferor of the second mortgage*), of the second part, E. F. of, &c. (*mortgagor*), of the third part, and G. H. of, &c. (*transferee*), of the fourth part: Whereas (*Recite mortgage to A. B. of* "the hereditaments firstly hereinafter described," *to secure* £500 *and interest*): And whereas (*Recite mortgage to C. D. of* "the hereditaments secondly hereinafter described," *to secure* £200 *and interest*): And whereas the said E. F. is seised of the hereditaments firstly, secondly, and thirdly hereinafter described for an estate in fee simple in possession, subject as to the said hereditaments firstly and secondly hereinafter described to the hereinbefore recited mortgages respectively, but free from all other incumbrances; And whereas the said sum of £500 remains owing on the security of the said indenture of the —— day of ——, but all interest on the same has been paid up to the date of these presents: And whereas the said sum of £200 remains owing on the security of the said indenture of the —— day of ——, but all interest on the same has been paid up to the date of these presents: And whereas the said G. H. hath agreed at the request of the said E. F. to pay to the said A. B. the sum of £500, and to the said C. D. the sum of £200, and to lend to the said E. F. the further sum of £400 on having transfers of the said several mortgage debts of £500 and £200 respectively, and the interest thereof, and the securities for the same respectively, and upon having the repayment of the said sums of £500, £200, and £400 respectively (making together the sum of £1100), with interest for the same respectively, secured in manner hereinafter expressed: NOW THIS INDENTURE WITNESSETH, that in consideration of the sum of £500 now paid by the said G. H. to the said

Parties.

Recite two mortgages of separate properties.

Seisin in fee of mortgagor.

That mortgage money remains owing on both mortgages.

Agreement for transfer and further advance.

Witnessing part.

A. B., at the request of the said E. F. (*the receipt, &c.*), THE SAID A. B., as mortgagee, hereby assigns, &c. (*assignment of mortgage debt of* £500, *and interest, and the securities for the same, suprà*, p. 637): AND THIS INDENTURE FURTHER WITNESSETH, that in consideration of the sum of £200 now paid by the said G. H. to the said C. D., at the request of the said E. F. (*the receipt, &c.*), THE said C. D., as mortgagee, hereby assigns, &c. (*assignment of mortgage debt of* £200, *and interest, and the securities for the same, suprà*, p. 637): AND THIS INDENTURE FURTHER WITNESSETH, that in consideration of the several sums of £500 and £200 paid by the said G. H. to the said A. B. and C. D. respectively as hereinbefore is mentioned, and in consideration of the sum of £400 now paid by the said G. H. to the said E. F. (*the receipt, &c.*), THE SAID E. F. hereby covenants with the said G. H., &c. (*to pay principal sum of* £1100 *and interest, suprà*, p. 515); AND THIS INDENTURE ALSO WITNESSETH, that for the considerations aforesaid, the said A. B., as mortgagee, as to the hereditaments firstly hereinafter described, and the said C. D., as mortgagee, as to the hereditaments secondly hereinafter described, at the request of the said E. F., hereby conveys, and the said E. F., as beneficial owner, as to all the hereditaments hereinafter described, hereby conveys and confirms unto the said G. H., FIRST, ALL, &c. (*parcels, as described in the mortgage to A. B.*), AND all other (if any) the hereditaments comprised in the said indenture of the —— day of ——: SECONDLY, ALL, &c. (*parcels, as described in mortgage to C. D.*), AND all other (if any) the hereditaments comprised in the said indenture of the —— day of ——: AND, THIRDLY, ALL, &c. (*additional parcels*): TO HOLD the same unto and to the use of the said G. H. in fee simple, freed and discharged, as to the hereditaments comprised in the hereinbefore recited indentures of mortgage respectively, from all right or equity of redemption now subsisting therein under or by virtue of the same indentures respectively, but subject as to all the said hereditaments to the proviso for redemption following, namely, that if, &c. (*proviso for redemption on payment of said* £1100 *and interest. Declaration as to leasing power, if desired, suprà*, p. 516.)

IN WITNESS, &c.

TRANSFER OF SEVERAL MORTGAGE DEBTS AND THEIR SECURITIES, AND ADDITIONAL PROPERTY CHARGED WITH OLD AND FURTHER ADVANCE.

One mortgagee assigns his mortgage debt to new mortgagee.

Another mortgagee assigns his debt.

Mortgagees and mortgagor convey the hereditaments comprised in the existing mortgages, and additional hereditaments

to new mortgagee, subject to proviso for redemption.

No. XCVI.

RECONVEYANCE BY MORTGAGEE (BY INDORSEMENT).

RECONVEYANCE *of* LANDS *by* MORTGAGEE *on* PAYMENT *of* DEBT *and* INTEREST (*by deed* INDORSED *on, or* WRITTEN AT THE END *of, the* MORTGAGE) (*a*).

Parties. THIS INDENTURE, made, &c., BETWEEN the within- [*or* above-] named A. B. (*mortgagee*), of the one part, and the within- [*or* above-] named C. D. (*mortgagor*), of the other part: WITNESSETH, that in consideration of all principal money and interest secured by the within- [*or* above-] written indenture having been paid (the receipt whereof the said A. B. hereby

Mortgagee reconveys, acknowledges), THE said A. B., as mortgagee, hereby conveys unto the said C. D., ALL the lands and hereditaments comprised in the within- [*or* above-] written indenture; TO HOLD the same

to mortgagor. unto and to the use of the said C. D., in fee simple, freed and discharged from all principal money and interest secured by and from all claims and demands under the said indenture.

IN WITNESS, &c.

No. XCVII.

RECONVEYANCE NOT BY INDORSEMENT.

RECONVEYANCE *of* LANDS *not by* INDORSEMENT.

THIS INDENTURE, made the —— day of ——, BETWEEN

Parties. A. B., of, &c. (*mortgagee*), of the one part, and C. D., of, &c.

Recital of mortgage. (*mortgagor*), of the other part: WHEREAS by an indenture dated, &c., and made between, &c., ALL, &c. (*parcels*) (*b*), were conveyed by the said C. D. unto and to the use of the said A. B., in fee simple by way of mortgage for securing the payment to the said

(*a*) For a short form of reconveyance and surrender to be endorsed on mortgage to a banking company, see No. 37, *supra*, p. 555.

(*b*) See note at p. 633 as to mode of describing parcels in recital of mortgage.

A B

C. D. of the sum of £—— with interest thereon: NOW THIS INDENTURE WITNESSETH, that in consideration of all principal money and interest secured by the hereinbefore recited indenture having been paid and satisfied (the receipt whereof the said A. B. hereby acknowledges), the said A. B., &c. (*as in last Precedent to the end, substituting* "the hereinbefore recited indenture" *for* "the within-written indenture").

Reconveyance not by indorsement.

Reconveyance by mortgagee to mortgagor.

IN WITNESS, &c.

No. XCVIII.

RECONVEYANCE *of* PROPERTY *by* ADMINISTRATOR *of* MORTGAGEE, *on payment of* MORTGAGE DEBT *and* INTEREST (*a*).

Reconveyance by administrator of mortgagee.

THIS INDENTURE, made the —— day of ——, BETWEEN A. B. of, &c. (*administrator of mortgagee*), of the one part, and C. D., of, &c. (*mortgagor*), of the other part (*Recite mortgage from C. D. to E. F.—Death of E. F. intestate, and administration granted to A. B.*): AND WHEREAS it appears from an account this day stated between the said A. B. and C. D., that there is now owing to the said A. B., as such administrator as aforesaid, upon or by virtue of the said indenture of mortgage, the sum of £——, for principal money and arrears of interest thereon up to the date of these presents: AND WHEREAS the said C. D. is desirous of paying off the said sum of £——, and of having a reconveyance of the mortgaged hereditaments in the manner hereinafter expressed: NOW THIS INDENTURE WITNESSETH, that in consideration of the sum of £——, to the said A. B. now paid by the said C. D., in full satisfaction of all principal moneys and interest secured by the hereinbefore recited indenture (*the receipt, &c.*), the said

Parties.

That principal money and arrears of interest are owing.

Desire on part of mortgagor to pay off, and to have hereditaments reconveyed.

Witnessing part.

Consideration.

(*a*) It is assumed in this case that the mortgagee died before the 1st of January, 1882, as otherwise the mortgaged property would have passed to the adminstrator under section 30 of the Conveyancing Act, 1881, which repeals the 4th section of the Vendor and Purchaser Act, 1874.

RECONVEYANCE BY ADMINISTRATOR OF MORTGAGEE.

A. B., as the personal representative of the said E. F., deceased, by virtue of the power for this purpose given to him by the "Vendor and Purchaser Act, 1874," and of all other powers (if any) him hereunto enabling, hereby conveys unto the said C. D., ALL the lands and hereditaments comprised in the said recited indenture: TO HOLD, &c. (*Habendum to C. D. in fee discharged from mortgage debt, supra, p.* 660.)

Administrator by virtue of Act conveys parcels to mortgagor.

IN WITNESS, &c.

No. XCIX.

SURRENDER OF TERM TO MORTGAGOR.

SURRENDER *of* MORTGAGED TERM *of* YEARS *by* REPRESENTATIVE *of* MORTGAGEE *on payment of* MORTGAGE DEBT (*by Indorsement*).

Parties.

THIS INDENTURE, made the —— day of ——, BETWEEN A. B. of, &c. (*executor of mortgagee*), of the one part, and the within-named C. D. (*mortgagor*), of the other part (*Recite death of X. Y., the mortgagee, and his will, appointing A. B. executor, and probate by him*): NOW THIS INDENTURE WITNESSETH, that in consideration of all principal money and interest secured by the within- [or above-] written indenture having been paid and satisfied (the receipt whereof the said A. B., as the personal representative of the said X. Y., deceased, hereby acknowledges): THE SAID A. B., as such personal representative as aforesaid, hereby surrenders unto the said C. D., THE messuage or tenement, farm, lands, hereditaments, and premises comprised in the within-written indenture: To the intent that all the residue now unexpired of the term of 500 years granted therein by the within-written indenture, may forthwith be merged and extinguished in the freehold and inheritance of the same premises.

Surrender by executor to intent that term may merge.

IN WITNESS, &c.

No. C.

RECONVEYANCE *of* FREEHOLDS *by the* PERSONAL REPRESENTATIVES *of the* TRANSFEREE *of the mortgage (by deed* INDORSED *or* WRITTEN AT THE END *of the mortgage*) (*a*). RECONVEYANCE BY PERSONAL REPRESENTATIVES.

THIS INDENTURE, made the —— day of ——, 1882, BETWEEN A. B., of, &c., and C. D., of, &c. (*personal representatives*), of the one part, and the within- [*or* above-] named E. F. (*mortgagor*), of the other part: WHEREAS L. M., named in the indenture of transfer dated the —— day of ——, 18—, indorsed on the within-written indenture [*or* L. M., named in the above-written indenture of transfer dated the —— day of ——, 18—], died on the —— day of ——, 1882, having made his will dated the —— day of ——, and thereby appointed the said A. B. and C. D. executors thereof, who duly proved the same in the principal Probate Registry of the High Court of Justice on the —— day of ——, 18—: NOW THIS INDENTURE WITNESSETH, that in consideration of all principal money and interest secured by the within- [*or* above-] written indenture of mortgage having been paid and satisfied (the receipt whereof the said A. B. and C. D., as the personal representatives of the said L. M., deceased, hereby acknowledge), the said A. B. and C. D., as such personal representatives as aforesaid, hereby convey unto the said E. F. All the lands and hereditaments comprised in the within- [*or* above-] written indenture of mortgage: TO HOLD the same unto and to the use of the said E. F., in fee simple, freed and discharged from all principal money and interest secured by and from all claims and demands under the said indenture of mortgage.

Parties.

Recital of death of transferee and his will.

Personal representatives of transferee reconvey to mortgagor.

IN WITNESS, &c.

(*a*) It is assumed in this case that the transferee died since the 31st Dec. 1881, so that sect. 30 of the Conveyancing Act, 1881, applies.

No. CI.

Surrender of Sub-term.

SURRENDER *of* Term *on payment of* Mortgage Debt *and* Interest, *where the* Mortgage *is by* Sub-demise.

Parties.

THIS INDENTURE made the —— day of ——, Between A. B. of, &c. (*mortgagee*), of the one part, and C. D. of, &c. (*mortgagor*), of the other part. (*Recite lease of premises to C. D. for* 99 *years at a ground-rent of* £10,—*mortgage by C. D. to A. B. for residue of term of* 99 *years* (*wanting* 10 *days*), *to secure payment by C. D. to A. B. of* £500 *and interest*): And whereas the said sum of £500 is still due on the security of the said indenture of mortgage, but all interest in respect thereof has been paid up to the date of these presents: NOW THIS INDENTURE WITNESSETH, that in consideration of the sum of £500 to the said A. B. now paid by the said C. D. in satisfaction of all principal money and interest secured by the said indenture of mortgage, (the receipt whereof the said A. B. hereby acknowledges): The said A. B., as mortgagee, hereby surrenders unto the said C. D. All the premises comprised in the said indenture of mortgage: To the intent that all the residue now unexpired of the said term of 99 years, wanting ten days, may forthwith be merged in the said term of 99 years.

Recite lease of premises and mortgage by leaseholder by sub-demise.

That mortgage debt is still due.

Consideration.

The mortgagee surrenders to mortgagor to the intent that the sub-term may merge in the original term out of which it was carved.

In witness, &c.

No. CII.

Reassignment of Leaseholds.

REASSIGNMENT *of* Leaseholds, *the* Mortgage *of which had been* Taken *by* Assignment *on* Payment *of the* Mortgage Debt.

Parties

THIS INDENTURE, made the —— day of ——, Between A. B. of, &c. (*mortgagee*), of the one part, and C. D. of, &c.

(*mortgagor*), of the other part. (*Recite lease of premises to C. D. for —— years, at nominal rent,—mortgage of the same premises by C. D. to A. B. for residue of the said term to secure payment by C. D. to A. B. of* £200 *and interest.*) NOW THIS INDENTURE WITNESSETH that in consideration of all principal money and interest secured by the said indenture of mortgage having been paid and satisfied (the receipt whereof the said A. B hereby acknowledges), the said A. B., as mortgagee, hereby assigns unto the said C. D. ALL the premises comprised in the said recited indenture of mortgage, TO HOLD the same unto the said C. D. for all the residue now unexpired of the said term of —— years therein, freed and discharged from all principal money and interest secured by and from all claims and demands under the said last mentioned indenture.

IN WITNESS, &c.

REASSIGNMENT OF LEASEHOLDS.

Recite lease and mortgage of the leaseholds by assignment.

In consideration of all monies secured by the mortgage having been paid,

mortgagee reassigns leaseholds to mortgagor for residue of the term,

discharged from all monies secured by the said indenture of mortgage.

No. CIII.

RECONVEYANCE *and* RELEASE *of* FREEHOLDS *and* COPYHOLDS *comprised in an* INDENTURE *of* MORTGAGE, *on* PAYMENT *of* DEBTS SECURED *by* INDENTURES *of* MORTGAGE *and further charge.*

RECONVEYANCE AND RELEASE OF FREEHOLDS AND COPYHOLDS.

THIS INDENTURE, made the —— day of ——, BETWEEN A. B. of, &c. (*mortgagee*), of the one part, and C. D. of, &c. (*mortgagor*), of the other part. (*Recite mortgage of freeholds and covenant to surrender copyholds, to secure* £500 *and interest.*) AND WHEREAS pursuant to the said covenant in this behalf contained in the said indenture the said C. D. on the —— day of —— out of court surrendered the said copyhold hereditaments to the use of the said C. D., his heirs and assigns, subject to a condition for making void the surrender on payment by the said C. D, to the said A. B. of the sum of £—— with interest for the same after the rate aforesaid on the —— day of —— then next: AND WHEREAS by an indenture dated, &c., and made between the said C. D. of the one part, and the said A. B. of the other part, in consideration of the sum of £—— paid by the said A. B. to the said

Parties.

Recite mortgage and further charge.

Conditional surrender of copyholds.

Further charge.

That monies secured by indentures and further charge are still due.

Reconveyance and Release of Freeholds and Copyholds.

C. D., the said A. B. declared that all the freehold and copyhold hereditaments comprised in the said indenture of mortgage should stand charged with the payment to the said C. D. of the said sum of £——and interest thereon at the rate of £—— per cent. per annum as thereinbefore covenanted to be paid as well as the sum of £—— and interest secured by the recited indenture of mortgage: And whereas the said principal sums of £—— and £——, making together the sum of £——, are still due and owing on the security of the said recited indentures, but all interest on account thereof has been paid up to the date of these presents: And whereas it has been arranged that immediately after the execution of these presents the said A. B. shall execute a warrant to the steward of the said manor to enter up satisfaction of the said conditional surrender as having received from the said C. D. all principal money and interest secured by such surrender (*a*): NOW THIS INDENTURE WITNESSETH, that in consideration of the sum of £——to the said A. B. now paid by the said C. D. in full satisfaction of all principal money and interest secured by the said recited indentures of mortgage and further charge (the receipt whereof the said A. B. hereby acknowledges), the said A. B., as mortgagee, hereby conveys unto the said C. D. All the freehold hereditaments and premises comprised in the said recited indentures of mortgage and further charge respectively: To hold the same unto and to the use of the said C. D. in fee simple, freed and discharged from all principal money and interest secured by and from all claims and demands under the said indentures respectively: And the said A. B. hereby absolutely releases and discharges the said C. D., and also all the copyhold hereditaments and premises comprised in and covenanted to be surrendered by the firstly hereinbefore recited indenture from all such principal money and interest, claims and demands as aforesaid.

That principal sum is still due.

Consideration.

Mortgagee reconveys freeholds to mortgagor in fee.

Release by mortgagee of copyhold hereditaments from all monies secured by the indentures of mortgage and further charge.

In witness, &c.

(*a*) For a form of such a warrant see *supra*, p. 647.

No. CIV.

RECONVEYANCE *and* SURRENDER *of* FREEHOLDS *and* LEASEHOLDS, *which were* MORTGAGED *in* FEE *as to the* FREEHOLDS, *and by* SUB-DEMISE *as to the* LESAEHOLDS, *on* PAYMENT *of the* MORTGAGE DEBT *and* INTEREST (*by* INDORSEMENT *on the* MORTGAGE.)

RECONVEYANCE OF LEASEHOLDS AND SURRENDER OF SUB-TERM IN LEASEHOLDS.

THIS INDENTURE, made the —— day of ——, BETWEEN the within-named A. B. (*mortgagee*), of the one part, and the within-named C. D. (*mortgagor*), of the other part: WITNESSETH, that in consideration of all principal moneys and interest secured by the within written indenture having been paid and satisfied, (the receipt whereof the said A. B. hereby acknowledges), THE SAID A. B. as mortgagee hereby conveys unto the said C. D. ALL the freehold hereditaments comprised in the within written indenture: TO HOLD the same unto and to the use of the said C. D. in fee simple, freed and discharged from all principal money and interest secured by and from all claims and demands under the within-mentioned indenture: AND THIS INDENTURE ALSO WITNESSETH, that for the consideration aforesaid the said A. B. hereby surrenders unto the said C. D. ALL AND SINGULAR the leasehold hereditaments and premises comprised in the within-written indenture, TO THE INTENT that all the residue now unexpired of the within-mentioned term of 99 years, therein wanting the last ten days thereof, may forthwith be merged and extinguished in the said term of 99 years.

Parties.

In consideration of all monies secured by mortgage having been paid,

Mortgagee reconveys freeholds to mortgagor, discharged from all monies secured by the indenture of mortgage.

Mortgagee surrenders leaseholds to mortgagor to intent that sub-term may be merged in the term out of which it was carved, discharged as aforesaid.

IN WITNESS, &c.

No. CV.

RELEASE BY MORTGAGEE OF TERM.

RELEASE *of* LANDS *by a* MORTGAGEE *of a* TERM *for* RAISING PORTIONS *where the* MORTGAGE *is* PAID OFF *out of the* PROCEEDS *of the sale of* PART *of the* SETTLED ESTATES (*by Indorsement on Mortgage*).

Parties.

THIS INDENTURE, made the —— day of ——, BETWEEN A. B. of, &c. (*mortgagee*), of the first part, C. D. of, &c. (*trustee of term for raising portions*), of the second part, E. F. of, &c., and G. H. of, &c. (*trustees to exercise power of sale and exchange*), of the third part, and I. K. of, &c. (*tenant for life*), of the fourth part:

Recite that mortgage money remains due.

WHEREAS the sum of £——, secured by the within-written indenture, still remains owing thereon, but all interest for the same up to the date of these presents hath been fully paid, as the said A. B. hereby acknowledges:

Power in settlement,

AND WHEREAS, among other powers created by the within-recited indenture of settlement of the —— day of ——, it was thereby provided that it should be lawful for the said E. F. and G. H., or the survivor of them, or the executors or administrators of such survivor (by such direction as therein mentioned),

to sell

to make sale and dispose of all or any of the manors and hereditaments thereby settled in manner therein expressed: and that they, or the survivor of them, or the executors or administrators of such survivor, should, at the request and by the direction of the person who for the time being would be entitled to the rents of the hereditaments thereinafter directed to be purchased, invest the moneys to arise by such sale or sales, in the purchase of other hereditaments to be settled to the uses thereby limited concerning the hereditaments which should have been so sold, but with power for the said E. F. and G. H., and the survivor of them, and the executors, or administrators of such survivor,

and apply proceeds in payment of incumbrances.

to apply any of such sale moneys in or towards payment and discharge of all or any of the gross sums then already charged, or which should thereafter by virtue of the powers thereinbefore contained be charged upon all or any of the hereditaments thereinbefore settled:

That trustees have in their hands money arising from sale of part of estates.

AND WHEREAS there is now in the hands, or standing to the account of the said E. F. and G. H., as the trustees of the power of sale contained in the said indenture of the —— day of ——, a considerable

RELEASE BY MORTGAGEE OF TERM.

amount of money which has arisen by the sale of certain parts of the said estates thereby settled, and which moneys are liable, by virtue of the same settlement, either to be laid out in the purchase of other hereditaments, or to be applied in discharge of any gross sums charged upon the same settled estates, or any part thereof: AND WHEREAS the said A. B. is willing to receive the said principal sum of £—— remaining due to him by virtue of the within-written indenture, and it has been agreed by and amongst the said other parties hereto, that the same shall be paid off by the said E. F. and G. H. out of the trust moneys in their hands produced by such sale of settled estates as aforesaid, to the intent that such debt or charge of £—— and interest may be wholly extinguished for the benefit of those entitled or to become entitled to the estates subject thereto, in manner hereinafter expressed: NOW THIS INDENTURE WITNESSETH, that in consideration of the sum of £—— (being part of the moneys produced by such sale of settled estates as aforesaid) by the said E. F. and G. H. as such trustees as aforesaid, paid to the said A. B., at the request and by the direction of the said parties hereto of the second and fourth parts, and the receipt of which said sum of £——, in full discharge of all moneys remaining due for principal or interest, or otherwise upon or by virtue of the within-written indenture, the said A. B. hereby acknowledges, the said A. B., at such request and by such direction as aforesaid, hereby releases and discharges ALL the manors, messuages, lands, tenements, and hereditaments comprised in the within-written indenture, of and from the said sum of £——, secured by the same indenture, and all interest for the same, and all claims and demands on account thereof: TO THE INTENT that the within-mentioned term of 500 years, and all other (if any) such term, estate, and interest as are vested in the said A. B., by virtue of the within-written indenture, for securing the repayment of the said sum of £——, and the interest thereof, may from henceforth cease and determine.

Agreement that mortgage shall be paid off out of proceeds of sales.

In consideration of mortgage money being paid out of said proceeds,

mortgagee releases settled estates from mortgage debt.

IN WITNESS, &c.

No. CVI.

RECEIPT INDORSED ON BUILDING SOCIETY MORTGAGE.

RECEIPT *for* MONEYS *to be indorsed on a* MORTGAGE *to a* BUILDING SOCIETY (*a*).

THE ———— Building Society hereby acknowledges to have received all moneys intended to be secured by the within (*or above*) written deed. IN WITNESS whereof the seal of the said society is hereto affixed this —— day of ——, by order of the Board of Directors (*or* Committee of Management) in presence of,

A. B., Secretary [or Manager].
[*Other witnesses if any required by the rules of the Society*].

(*a*) By the "Building Societies Act, 1874," (37 & 38 Vict. c. 42, s. 42), it is provided, that when all moneys intended to be secured by any mortgage or further charge given to any society under the Act have been fully paid or discharged, the society may indorse upon or annex to such mortgage or further charge a reconveyance of the mortgaged property to the then owner of the equity of redemption, or to such uses as he may direct, or a receipt under the seal of the society countersigned by the secretary or manager in the form specified in the schedule to the Act, and such receipt shall vacate the mortgage, or further charge, or debt, and vest the estate of and in the property therein comprised in the person for the time being entitled to the equity of redemption, without any reconveyance. See Fourth City M. B. B. Society *v.* Williams, 14 Ch. D. 140.

No. CVII.

CHARGE *by a* REGISTERED PROPRIETOR *under the* "LAND TRANSFER ACT, 1875." CHARGE BY REGISTERED PROPRIETOR.

The "Land Transfer Act, 1875."

Office of Land Registry.

Charge.

I, A. B., the registered proprietor of the land entered in the register under the above number, in consideration of [*four thousand pounds*] paid to me, charge such land with the payment to C. D., of, &c., on the —— day of ——, 18—, of the principal sum of [£4000], with interest at the rate of £— per cent. per annum, and with a power of sale to be exercised after the —— day of ——, 18—.

NOTE.—If no interest is to be payable or no power of sale given, substitute the words "without interest" or "without a power of sale," as the case may be.

[*Signature of registered proprietor.*]

Witness.

X. Y., a Solicitor.

No. CVIII.

TRANSFER *of* CHARGE *by a* REGISTERED PROPRIETOR. TRANSFER OF CHARGE BY REGISTERED PROPRIETOR.

The "Land Transfer Act, 1875."

Office of Land Registry.

Transfer of Charge.

I, C. D., the registered proprietor of the charge dated the —— day of ——, 18—, on the land registered in the name of A. B., under the above number, in consideration of [*four thousand pounds*] paid to me, transfer such charge to E. F. of, &c., as proprietor.

[*Signature of registered proprietor.*]

Witness.

X. Y., a Solicitor.

No. CIX.

ARRANGEMENT BETWEEN MORTGAGOR AND SEVERAL MORTGAGEES AS TO DEEDS DEPOSITED WITH BANKERS.

DEED *of* ARRANGEMENT *between a* MORTGAGOR *and several* MORTGAGEES *of distinct parts of his estate, where the* TITLE DEEDS *relating to the* PROPERTY *comprised in the* MORTGAGES *were deposited with* BANKERS *on the* ACCOUNT *of the several* MORTGAGEES.

Parties. THIS INDENTURE, made the —— day of ——, BETWEEN A. (*mortgagor*), of the first part, B., C., and D. (*mortgagees*), of the second part, E. and F. (*other mortgagees*), of the third part, G., H., and I. (*other mortgagees*), of the fourth part, and

Recital of mortgages. K., L., and M. (*other mortgagees*), of the fifth part (*Recite mortgage from A. to B., C., and D., of hereditaments in first part of first schedule; also mortgage from A. to E. and F. of hereditaments in second part of first schedule; also mortgage from A. to G., H., and I., of hereditaments in third part of first schedule; also mortgage from A. to K., L., and M. of hereditaments in fourth part of first schedule*): AND WHEREAS the documents mentioned in the second schedule hereunder written relate to all the hereditaments comprised in the first schedule hereunder written, except some of the hereditaments comprised in the fourth part of the first schedule, and the same documents also relate to hereditaments of the said A. not included in any of the said mortgages: AND WHEREAS upon the treaty for the mortgages made by the said four several hereinbefore recited indentures it was agreed that the said documents should be deposited in the bank of Messrs. ——, and that the said parties to these presents should enter into such agreement respecting the same as is hereinafter contained: AND WHEREAS the said documents have been deposited in the said bank of Messrs. —— pursuant to the said agreement: NOW THIS INDENTURE WITNESSETH, and in consideration of the said premises IT IS HEREBY AGREED AND DECLARED between and by the parties hereto as follows:—

That deeds in 2nd schedule relate to mortgaged properties.

Agreement for deposit of deeds with bankers.

Deposit of deeds.

Witnessing part.

Mutual agreement.

1. Deeds to remain deposited,

1. THE documents mentioned in the second schedule hereunder written are and shall remain deposited at the said

bank of Messrs. —— on the account of the following persons, namely:

ARRANGEMENT BETWEEN MORTGAGOR AND SEVERAL MORTGAGEES AS TO DEEDS DEPOSITED WITH BANKERS.

The said B., C., and D., as the mortgagees under the first hereinbefore recited mortgage;

The said E. and F., as the mortgagees under the secondly hereinbefore recited mortgage;

The said G., H., and I., as the mortgagees under the thirdly hereinbefore recited mortgage; and

on behalf of several sets of mortgagees.

The said K., L., and M., as the mortgagees under the fourthly hereinbefore recited mortgage;

All which persons, or those, or that one of them (as the case may be), whose mortgages, or mortgage, shall for the time being remain subsisting, are, or is hereinafter, called or included in the expression "the mortgagees."

2. Deeds to remain deposited unless all mortgagees concur in changing custody of same.

2. THE said documents shall remain deposited as aforesaid so long as the hereinbefore recited mortgages, or any two or three of them, shall remain subsisting, unless all the mortgagees shall agree to remove the said documents, or any of them, into the custody of some other person or persons, in which case they shall be at liberty so to do, without the consent of the said A., his heirs or assigns; but the mortgagees shall immediately after such change of custody give notice of the same to the said A., his heirs or assigns.

3. Deeds to be produced to mortgagees whenever required.

3. WHILE the said documents shall remain deposited in the said bank of Messrs. ——, or with any person or persons into whose custody the same may be removed as aforesaid, the said documents shall, at the request of any of the mortgagees, be produced to them or him, or to their or his solicitors or agents, or at any trial, hearing, or examination in any court and on all other occasions on which such productions can reasonably be required for the manifestation and defence of the title of such mortgagees or mortgagee to all or any part of the hereditaments comprised in their or his mortgage, and such mortgagees or mortgagee, or their or his solicitors and agents, shall be at liberty to examine the said documents when so produced as aforesaid, and to make copies, abstracts, and extracts of and from the same: PROVIDED ALWAYS, that any mortgagees or mortgagee requiring the production of the said documents, or any of them, for any of the purposes aforesaid, shall give three clear days' notice of

Other mortgagees to be

ARRANGEMENT BETWEEN MORTGAGOR AND SEVERAL MORTGAGEES AS TO DEEDS DEPOSITED WITH BANKERS.

at liberty to appoint a person to attend at production.

their or his intention in that behalf to the other mortgagees, and in such notice shall specify the time and purpose at and for which such production shall be required, and such other mortgagees shall be at liberty to appoint a person or persons on their behalf to attend and be present at such production, but so that not more than one person shall be so appointed on behalf of each set of mortgagees, and the costs and expenses of and incidental to the production of the said documents, and the examining and making copies, abstracts, and extracts of and from the same (including the costs and expenses incurred by the other mortgagees in employing a person or persons to attend on their behalf as aforesaid), shall be borne and paid by the persons or person requiring such production, and shall be added by them or him to their or his costs as mortgagees or mortgagee, and be recoverable against the said A., his heirs, executors, administrators, and assigns, as such costs accordingly.

4. Deeds to be produced to mortgagor for evidencing his title to property not included in mortgages.

4. WHILE the said documents shall remain deposited at the said bank, or with any person or persons into whose custody the same may be removed as aforesaid, the same shall, at the request and cost of the said A., his heirs or assigns, be produced to him or them, or to his or their solicitors or agents, or at any trial, hearing, or examination in any court, and on all other occasions on which such production can reasonably be required, for the manifestation and defence of the title of the said A., his heirs or assigns, to all or any of the hereditaments to which such documents relate, and which are not included in the said mortgages, or in such of them as shall for the time being be subsisting, and the said A., his heirs and assigns, and his or their solicitors and agents, shall be at liberty to examine the said documents when so produced as aforesaid, and to make copies, abstracts, and extracts of and from the same: PROVIDED ALWAYS, that before requiring the production of the said documents, or any of them as aforesaid, the said A., his heirs or assigns, shall give three clear days' notice of his or their intention in that behalf to all the mortgagees or to their solicitors, and such mortgagees shall be at liberty to appoint a person or persons on their behalf to attend and be present at such production, but not more than one person shall be employed to

attend as aforesaid on behalf of each set of mortgagees, And the said A., his heirs or assigns, shall pay to the mortgagees the costs and expenses incurred by them in employing a person or persons to attend on their behalf as aforesaid.

ARRANGEMENT BETWEEN MORTGAGOR AND SEVERAL MORTGAGEES AS TO DEEDS DEPOSITED WITH BANKERS.

5. If all the hereinbefore recited mortgagees except one shall be satisfied, the said documents shall be delivered to the mortgagees or mortgagee whose mortgage shall remain subsisting, And such mortgagees or mortgagee shall from time to time, at the request and cost of the said A., his heirs or assigns, produce the said documents, or any of them, to him or them, or to his or their solicitors and agents, or at any trial, hearing, or examination in any court, and on all other occasions on which such production can be reasonably required for the manifestation and defence of the title of the said A., his heirs or assigns, to all or any part of the hereditaments to which the said documents relate, and which are not included in the mortgage so remaining subsisting as aforesaid, And shall also permit him or them, or his or their solicitors or agents, at the like cost, to examine the said documents and make copies, abstracts, and extracts of and from the same or any of them: But the mortgagees or mortgagee to whom the said documents shall be delivered as aforesaid shall not be personally liable for the production of the said documents or otherwise in relation thereto, after they or he shall have ceased to have the actual custody of the same documents.

5. If all mortgagees but one are satisfied, deeds to be delivered to remaining mortgagee.

6. If the hereditaments comprised in any of the said mortgages, or any of such hereditaments shall at any time or times be sold under the power of sale contained in the mortgage thereof, the mortgagees or mortgagee by whom such sale shall be made may cause the documents relating to the said hereditaments to be delivered to the purchaser or any of the purchasers upon his or their giving to the persons entitled to or interested in the hereditaments to which such documents relate, and not included in such sale, an acknowledgment of their right to production and delivery of copies of the said documents and an undertaking for their safe custody; every such acknowledgment and undertaking to be at the expense of the covenantees: Or the mortgagees or mortgagee by whom such sale shall be made may, if they or he think fit, arrange with the purchaser or any of the purchasers for the delivery to

6. If any property sold by a mortgagee, deeds may be delivered to purchaser with concurrence of other mortgagees.

ARRANGEMENT BETWEEN MORTGAGOR AND SEVERAL MORTGAGEES AS TO DEEDS DEPOSITED WITH BANKERS.

him or them of the said documents at some future time on his or their giving such acknowledgment and undertaking as aforesaid: PROVIDED ALWAYS, that no mortgagee shall, under this provision, deliver or cause to be delivered the said documents, or any of them, to any purchaser or purchasers without the consent of the other mortgagees or mortgagee (if any) on whose account the said documents shall for the time being be deposited as aforesaid.

7. If not so delivered, purchaser to have the same rights as regards production as mortgagees.

7. IF any hereditaments shall be sold by any mortgagees or mortgagee while the said documents shall remain deposited as aforesaid, and the same documents, or any of them, shall not be delivered to the purchaser or any of the purchasers of such hereditaments, the said purchaser or purchasers shall, while the said documents shall remain deposited as aforesaid, have the same right to the production of the said documents, and to examine and make copies, abstracts, and extracts of and from the same as is hereinbefore given to the mortgagees.

8. A mortgagee after foreclosure to have same rights with regard to production as before.

8. IF any of the mortgagees shall foreclose the equity of redemption of the hereditaments comprised in their mortgage, the mortgagees or mortgagee so foreclosing shall, from and after such foreclosure, have the same right in respect to the said documents as if such foreclosure had not taken place and their or his mortgage had remained subsisting.

IN WITNESS, &c.

THE FIRST SCHEDULE ABOVE REFERRED TO (*containing in four parts a short description of the several mortgaged properties*).

THE SECOND SCHEDULE ABOVE REFERRED TO (*comprising the documents*).

No. CX.

DEED *of* ARRANGEMENT *with respect to* TITLE DEEDS *deposited with a* SOLICITOR ON BEHALF *of several* MORTGAGEES *of* DIFFERENT PROPERTIES, *and on behalf also of the* OWNERS *of* OTHER PROPERTIES *to which the* DEEDS, *or some of them, also* RELATE.

ARRANGEMENT AS TO DEEDS DEPOSITED WITH SOLICITOR FOR MORTGAGEES AND OWNERS OF DIFFERENT PROPERTIES.

THIS INDENTURE, made &c., BETWEEN A. B., C. D., and E. F. (*the mortgagors as trustees of part of the property, and the owners of other property held partly under the same title*), of the first part, G. H. of, &c. (*the tenant for life of part of the property and also of other property*), of the second part (*the several mortgagees of the third to the tenth parts*), and X. Y. of &c. (*the depositee*), of the eleventh part: (*Recite the various mortgages and also other documents relating to the title*): AND WHEREAS the documents mentioned in the second schedule hereunder written relate respectively to the hereditaments comprised in the hereinbefore recited mortgages or some of them, as by the statement at the foot of the said second schedule more particularly appears: and some of the said documents relate also to other hereditaments not included in any of the said mortgages, but vested either in the said A. B., C. D., and E. F., as the executors and trustees of the said will of the said ——, or in the said G. H., as tenant for life under the said indenture of settlement, of, &c., as by the said statement at the foot of the said second schedule also appears: AND WHEREAS it has been agreed that the said documents shall be deposited with the said X. Y., and that the said parties to these presents shall enter into such agreements respecting the same as are hereinafter contained: AND WHEREAS the said documents have been deposited with the said X. Y. pursuant to the said agreement: NOW THIS INDENTURE WITNESSETH, and in consideration of the premises, IT IS HEREBY AGREED AND DECLARED, between and by the parties hereto as follows:

Parties.

Recital of mortgages.

That deeds specified in 2nd schedule relate to mortgaged properties, and some of them to other property also.

Agreement for deposit with solicitor.

Witnessing part.

1. THE documents specified in the second schedule hereunder written shall remain in the custody of the said X. Y.

1. Deeds to remain in custody of solicitor on

ARRANGEMENT AS TO DEEDS DEPOSITED WITH SOLICITOR FOR MORTGAGEES AND OWNERS OF DIFFERENT PROPERTIES.

account of all the mortgagees, and also as to some of them on the account of the mortgagors also.

so long as the hereinbefore recited mortgages respectively shall remain subsisting, or until the custody of the same shall have been changed under any of the provisions of these presents on the account and for the benefit of the several persons for the time being entitled as mortgagees under the hereinbefore recited mortgages respectively to the hereditaments to which the said documents respectively relate: And such of the said documents as relate not only to the hereditaments comprised in some of the said mortgages, but also to other hereditaments vested in the said A. B., C. D., and E. F., as the trustees of the said will of the said ——, or in the said G. H. as tenant for life under the said indenture of, &c., and not included in any of the said mortgages, shall remain in the custody of the said X. Y. during the like period on the account and for the benefit not only of the said mortgagees respectively, but also of the said A. B., C. D., and E. F., their heirs and assigns, or of the said G. H. and his successors in title, as the case may require.

2. Deeds to be produced when required.

2. THE said X. Y. shall, whenever requested so to do by any of the persons on whose account the said documents have been deposited as aforesaid, produce the said documents, or any of them, to the person or persons requiring such production, or to any person or persons authorised in that behalf, by him, her, or them, or at any trial, hearing, or examination in any court, and on all occasions on which such production can reasonably be required for the purpose of evidencing and defending the title of the person or persons requiring such production as aforesaid, to the hereditaments to which the said documents relate or any part thereof, and such person or persons shall be at liberty to examine the said documents when so produced as aforesaid, and to make copies, abstracts, and extracts of and from the same; And the said X. Y., or his clerk, shall always attend at the production of the said documents, and shall be entitled to be paid the usual and proper professional charges of a solicitor for such attendance, and also for any other business which he may do in relation to the said documents: AND the costs and expenses of every such production (including such charges as aforesaid) shall be borne by the person or persons requiring such production, but so that if such person or persons shall be a mortgagee

or mortgagees, he, she, or they shall add such costs and expenses to his, her, or their costs as mortgagee, and be entitled to recover the same accordingly against the said X. Y., or other the person or persons entitled to the equity of redemption of the mortgaged hereditaments.

ARRANGEMENT AS TO DEEDS DEPOSITED WITH SOLICITOR FOR MORTGAGEES AND OWNERS OF DIFFERENT PROPERTIES.

3. If all the mortgagees on whose account the said documents, or any of them, shall for the time being be deposited under these presents shall at any time or times concur in desiring that the said documents, or any of them, shall be removed from the custody of the said X. Y., or from the custody of the person with whom the same may for the time being be deposited under this provision into the custody of any other person, then and in such case and so often as the same shall happen, the said mortgagees shall be at liberty, without the consent of the said persons parties hereto of the first and second parts, or their respective heirs or assigns, or successors in title, or any or either of them, to remove the said documents accordingly: And the person into whose custody the said documents shall for the time being be removed shall hold the same for the purposes and subject to the provisions for and subject to which the said X. Y. is hereby directed to hold the same, in like manner in all respects as if he had been hereby appointed to have the custody of the said documents in the place of the said X. Y.

3. Custody may be changed with concurrence of all the mortgagees.

4. If the said X. Y., or other the person in whose custody the said documents shall for the time being be deposited, shall die or be desirous of giving up the custody of the same, then and so often as the same shall happen the mortgagees, on whose account the said documents shall for the time being be deposited, may appoint a person to take the custody of the said documents in the place of the person so dying or desiring to give up the custody of the said documents as aforesaid, and the person so appointed shall hold the said documents for the purposes and subject to the provisions for and subject to which the said X. Y. is hereby directed to hold the same, in like manner in all respects as if he had been hereby appointed to have the custody of the said documents in the place of the said X. Y.

4. On death, &c., of depositee, new depositee to be appointed.

5. If and whenever it shall happen that by reason of the satisfaction of any one or more of the mortgagees or otherwise

5. If mortgagees re-

ARRANGEMENT AS TO DEEDS DEPOSITED WITH SOLICITOR FOR MORTGAGEES AND OWNERS OF DIFFERENT PROPERTIES.

there shall be only one mortgagee or set of mortgagees on whose account the said documents or any of them shall for the time being be deposited, then and in such case such mortgagee or mortgagees may require the said documents to be delivered to him, her, or them, and the same shall be so delivered accordingly. And the mortgagee or mortgagees to whom the said documents shall be so delivered, shall, from time to time, at the request and cost of the said A. B., C. D., and E. F., their heirs or assigns, or such trustees as aforesaid, or of the said G. H., as such tenant for life as aforesaid, or of his successors in title, produce the said documents, or any of them, to them or him, or to their or his solicitors or agents, or at any trial, hearing, or examination in any court, and on all other occasions on which such production can reasonably be required for the purpose of evidencing and defending the title of the persons or person requiring such production to any hereditaments belonging to or vested in them or him as aforesaid, and not included in the then subsisting mortgage. And shall also permit them or him, or their or his solicitors or agents, at the like cost, to examine the said documents, and make copies, abstracts, and extracts of and from the same, or any of them: But the mortgagee or mortgagees to whom the said documents shall be delivered as aforesaid shall not be personally liable for the production of the said documents, or otherwise in relation thereto, after he, she, or they shall have ceased to have the actual custody of the said documents.

duced to one, deeds may be delivered to remaining mortgagee.

6. If any part of the property is sold by a mortgagee, deeds may be delivered to purchaser with concurrence of other mortgagees.

6. If the hereditaments comprised in any of the said mortgages, or any of such hereditaments, shall at any time or times be sold under any power of sale vested in any of the mortgagees, the mortgagee or mortgagees by whom such sale shall be made may cause the documents relating to the said hereditaments, or any of them, to be delivered to the purchaser or any of the purchasers thereof upon his or their giving to the persons entitled to or interested in the hereditaments to which such documents relate, and which are not included in such sale, an acknowledgment of their right to production and delivery of copies of the said documents, and an undertaking for their safe custody, every such acknowledgment and undertaking to be at the expense of the covenantee: Or the mortgagee or mortgagees by whom such sale shall

be made, may, if he, she, or they think fit, arrange with the purchaser, or any of the purchasers, for the delivery to him or them of the said documents at some future time on his or their giving such acknowledgment and undertaking as aforesaid: PROVIDED ALWAYS that no mortgagee shall under this provision deliver or cause to be delivered the said documents or any of them to any purchaser or purchasers without the consent of the other mortgagees or mortgagee (if any) on whose account the said documents shall for the time being be deposited as aforesaid.

ARRANGEMENT AS TO DEEDS DEPOSITED WITH SOLICITOR FOR MORTGAGEES AND OWNERS OF DIFFERENT PROPERTIES.

7. IF any hereditaments shall be sold by any mortgagees or mortgagee while the said documents shall remain deposited as aforesaid, and the same documents shall not be delivered to the purchaser or any of the purchasers of such hereditaments, the said purchaser or purchasers shall, while the said documents shall remain deposited as aforesaid, have the same right to the production of the said documents, and to examine, and make copies, abstracts, and extracts of and from the same, as is hereinbefore given to the said mortgagees.

7. If not so delivered, purchaser to have same rights with regard to production as mortgagees.

8. IF any of the said mortgagees shall foreclose the equity of redemption of the hereditaments comprised in his, her, or their mortgage, the mortgagee or mortgagees so foreclosing shall have the same rights in respect of the said documents as if such foreclosure had not taken place, and his, her, or their mortgage had remained subsisting.

8. After foreclosure, mortgagee to have same rights with regard to production as before.

IN WITNESS, &c.

THE FIRST SCHEDULE ABOVE REFERRED TO (*comprising the mortgaged properties*).

THE SECOND SCHEDULE ABOVE REFERRED TO (*comprising the documents*).

BILLS OF SALE.

Division of subject.

It is proposed in this Dissertation to consider:—I. The modes of transfer of personal chattels. II. The provisions of the Bills of Sale Acts. III. In what cases, having regard to the Bills of Sale Acts, a gift or sale of personal chattels is liable to be avoided by creditors under the statute 13 Eliz. c. 5, or the trustee of a bankrupt can dispose of chattels in his possession as reputed owner under the order and disposition clause in the "Bankruptcy Act, 1869." IV. In what cases a bill of sale is an act of bankruptcy. V. The proper mode of framing a bill of sale by way of mortgage, and the operation of bills of sale of after-acquired chattels.

I. *The modes of transfer of personal chattels.*

Modes of transfer of personal chattels.

The property in personal chattels may be transferred, by actual delivery, by deed, or by a contract for sale.

Parol gift of chattels void.

A *gift* of chattels must be by delivery or deed. A parol gift is void (*a*).

Delivery: what is sufficient.

Where actual delivery of the articles which are the subject of the gift is impossible or inconvenient, a delivery of some symbol of possession will be sufficient, as where the goods are in a warehouse, a delivery of the key (*b*). The marking of the goods by the purchaser has been also held to be a delivery and taking possession (*c*).

(*a*) Irons *v.* Smallpiece, 2 B. & Ald. 551; Shower *v.* Pilch, 4 Exch. 478, 19 L. J. (Ex.) 113.

(*b*) Ryall *v.* Rowles, 1 Ves. Senr. 366.

(*c*) Ellis *v.* Hunt, 3 T. R. 464; Stoveld *v.* Hughes, 14 East, 308.

Bill of sale.

Absolute or conditional.

A deed or other instrument transferring the property in chattels, is usually called a bill of sale. Bills of sale are either absolute, entitling the grantee to immediate possession ; or conditional, entitling him to take possession on the performance or non-performance of some condition, *e.g.*, a mortgage, where the mortgagor is entitled to retain possession until default.

Contract for sale, requisites of, under Statute of Frauds.

A contract for the sale of goods, if of the value of 10*l.* or upwards, must, under the Statute of Frauds, be accompanied by acceptance of part of the goods or payment of part of the money as earnest money by the purchaser, *or*, there must be a memorandum in writing signed by the parties to be charged, or their agents, and if the contract is not to be performed within a year, a memorandum in writing is necessary, however small may be the value of the goods. Subject to this condition the contract passes the property in the goods at law, and the vendor is bound on payment of the full price to deliver them over to the vendee.

An agreement, letter, or memorandum for or relating to the sale of goods, wares, or merchandise, is exempted from stamp duty (*d*), and it is apprehended that this exemption extends to an instrument purporting to be a present assignment of this description of property (*e*).

Fixtures.

Fixtures, *i.e.*, chattels affixed to the land or to a building, are, when so affixed, part of the land, and pass by an assurance of the land itself without being expressly mentioned, and this is so whether the assurance be absolute or by way of mortgage, legal or equitable (including a deposit of deeds), and whether the person making the assurance, or the depositor, be absolute owner of the land and fixtures, or a lessee of the land who has put up the fixtures and has a right to remove them as against his landlord (*f*). But a lessee or tenant having put up

(*d*) 33 & 34 Vict. c. 97, sch. "Agreement."

(*e*) See Horsefall *v.* Key, 17 L. J. Ex. 266.

(*f*) Colgrave *v.* Dios Santos, 2 B. & C. 76 ; Longstaff *v.* Meagoe, 2 Ad. & El. 167 ; *Ex parte* Cotton, 2 M. D. & G. 725 ; Clinie *v.* Wood, L. R. 3 Ex. 328 ; *Ex parte* Astbury, L. R. 4 Ch. 630 ; *Ex parte* Broadwood, 1 M. D. & De G. 621 ; *Ex parte* Price and another, 2 M. D. & G. 58 ; Meux *v.* Jacobs, L. R. 7 H. L. 481.

fixtures which he has a right to remove, may assign them by deed or writing separately from his interest in the land. Such an assignment operates as a transfer of the right of severance, and a licence to the assignee to enter upon the land for the purpose of exercising such right (*g*).

(*g*) Thomson *v.* Pettit, 16 L. J. Q. B. 162 ; Horsfall *v.* Key, 17 L. J. Ex. 266.

Right to fixtures as between landlord and tenant.

The rule with reference to fixtures as between landlord and tenant is that everything which the latter affixes for the better enjoyment of the property during the term, whether the annexation is made for the purpose of trade, or for domestic convenience or ornament, may be removed by him during the term, provided the removal can be made without material injury to the freehold, and provided the fixture is not a substantial addition to the house, similar to the conservatory erected by the tenant in Buckland *v.* Butterfield, 2 Brod. & Bing. 54, or a building with foundations let into the soil, as in the case of Whitehead *v.* Bennett, 27 L. J. Ch. 474 ; see also Thresher *v.* East London Waterworks Company, 2 B. & C. 608. Accordingly, it has been held that vats, colliery engines, looms fastened to the floor, and other fixed machinery, wooden cornices, chimney-pieces, fixed wainscot, hangings, pier-glasses, grates, stoves, cooling coppers, blinds, a fixed pump, &c., are removable by the tenant. (Poole's Case, 1 Salk. 368 ; Lawton *v.* Lawton, 3 Atk. 13 ; Dean *v.* Allalley, 3 Esp. N. P. C. 11 ; Foley *v.* Addenbroke, 13 M. & W. 174 ; Avery *v.* Cheslyn, 3 Ad. & El. 75 ; Boyd *v.* Shorrock, L. R. 5 Eq. 72 ; Grymes *v.* Boweren, 6 Bing. 437 ; Queen *v.* Lee, L. R. 1 Q. B. 251 ; Amos & Ferrard's Fixtures, pp. 42, 48, 74, 82, 86.)

Whether tenant may remove green-houses.

It appears that an ordinary tenant would not be entitled to remove a greenhouse erected by him which is fixed with mortar to foundation walls of brickwork, or such a thing as a boiler built into the masonry of the building ; but that greenhouses, forcing pits, and hotbed frames erected by nursery gardeners for the purposes of their trade, may be removed so far as they do not consist of brickwork. (Jenkins *v.* Getting, 2 J. & H. 520.) Buildings erected by a rector during his incumbency may be removed by him or his representatives, when if he had been only an ordinary tenant they would have been irremovable. Thus, when a rector built in his garden two hothouses, consisting of a frame and glass-work resting on brick walls, it was held that his executors were entitled to remove them without incurring any liability for dilapidation or waste. (Martin *v.* Roe, 7 El. & Bl. 237.)

Right to fixtures as between heir and executor.

Questions often arise as to what are to be deemed fixtures as between the heir and executor of a deceased owner. The principle is this :—If machinery or any more or less important article is affixed by the owner, though it be only slightly affixed, as by bolts, nuts, or screws, it is to be considered as part of the land, if the object is to increase the value or beneficial enjoyment of the premises, whether the purpose he has in view is profit or domestic convenience or ornament. By way of illustration, the engines which the owner affixed, as in the case of Fisher *v.* Dixon, 12 Cl. & Fin. 312, the steam-engine and boilers, mill-gear, &c., erected, as in the case of Mather *v.* Fraser, 2 K. & J. 536, the threshing-machine attached to the barn to improve its usefulness as a barn, as in the case of Wiltshear *v.* Cotterell, 1 E. & B. 674, the hay-cutter attached to the stable as an adjunct and to improve its usefulness as a stable, as in Walmisley *v.* Milne, 29 L. J. C. P. 97, and the

II. *The provisions of the Bills of Sale Acts.*

Possession of chattels carries presumption of ownership.

The possession of chattels carries with it a presumption of ownership which does not arise in relation to a house or land, the occupier of which is as often a tenant as absolute proprietor, and the claim of creditors to some protection against secret alienations of their debtors' goods has from time to time been recognised by the legislature and courts of law. Up to 1854 this protection depended mainly on the Act 13 Eliz. c. 5, and, as regards traders, on the Bankruptcy laws.

First Bills of Sale Act in 1854. Supplemental Act in 1866. followed by Act of 1878, which has been amended by Act of 1882.

In 1854 the first Act was passed, providing for the registration of bills of sale. This, and a supplemental Act passed in 1866, whereby registration was required to be renewed every five years, were repealed, except as regards instruments made before the 1st January, 1879, by the Bills of Sale Act, 1878 (*a*). This Act has been amended and partially repealed by the Bills of Sale Act (1878) Amendment Act, 1882 (*b*), which contains provisions having for their object not only the protection of the creditors of the grantor from fraudulent dispositions by him, but also the protection of the grantor himself from the oppressive action of money lenders.

The provisions of the Acts of 1878 and 1882, taken together, are in effect as follows :—

To what Bills of Sale Act of 1878 applies.

1. The Act of 1878 applies to every bill of sale executed on or after the 1st January, 1879 (whether absolute or subject or not subject to any trust) whereby the holder or grantee has power, either with or without notice, and either immediately or at any future time, to seize or take possession of any personal chattels comprised in or made subject to such bill of sale (*c*).

looms attached to the floors of the mill, as in Holland *v.* Hodgson, L. R. 7 C. P. Ex. Ch. 328, were held to be annexations to improve the inheritance. (See also Queen *v.* Lee, L. R. 1 Q. B. 251 ; Longbottom *v.* Berry, L. R. 5 Q. B. 123.)

What are not fixtures.

As to what are not fixtures, see Davis *v.* Jones, 2 Bar. & Ald. 165 ; Wansbrough *v.* Maton, 4 A. & E. 884 ; Wood *v.* Hewitt, 14 L. J. Q. B. 247 ; Penton *v.* Robart, 2 East, 90 ; Culling *v.* Tuffnal, Bul. N. P. 34 ; Holland *v.* Hodgson, *ubi suprà ;* R. *v.* Otley, 1 B. & Ad. 161 ; *Ex parte* Astbury, L. R. 4 Ch. 630.

(*a*) 41 & 42 Vict. c. 31.
(*b*) 45 & 46 Vict. c. 43.
(*c*) Sec. 3.

To what Bills of Sale Act of 1882 applies.

2. The Act of 1882 applies to bills of sale given on or after the 1st November, 1882, by way of security for the payment of money, and also (it is conceived) to bills of sale given for that purpose within seven days before the 1st November, 1882, if they were not registered at that date (*d*).

Bills of sale under Act of 1878 must be (1) attested by solicitor, (2) registered within seven days, and (3) state consideration;

3. Every bill of sale to which the Act of 1878 applies, and the Act of 1882 does not apply, must observe the following conditions, namely:—(1), Its execution must be attested by a solicitor of the Supreme Court, and the attestation must state that before its execution the effect thereof was explained to the grantor by the attesting solicitor (*e*); (2), It must be registered within seven days from the making or giving thereof (*f*); and (3), It must set forth the consideration for which it was given (*f*). If the above conditions have not been observed, the bill of sale is void as against all trustees of the estate of the grantor in bankruptcy or liquidation, or under any assignment for the benefit of creditors, and against execution creditors, so far as regards the property in or right to the possession of any chattels comprised in such bill of sale, which at or after the filing of the bankruptcy or liquidation petition, or the execution of the assignment, or the execution of process, and after the expiration of such seven days (*g*), are in the possession or apparent possession of the grantor (*h*).

or otherwise are void against trustee in bankruptcy, &c.

(*d*) Sec. 3. It might be inferred from the language of this section that the Act of 1882 applies to all unregistered bills of sale made before its commencement. It is conceived, however, that it can only apply to those with respect to which the seven days has not expired. The subsequent sections of the Act evidently refer to future instruments, the word "shall" being used throughout, and are in their nature inapplicable to instruments which at the time when the Act came into operation were incapable of being registered.

Construction of clause as to attestation by a solicitor.

(*e*) Sec. 10. Attestation by a solicitor is not necessary as between grantor and grantee: Davis *v.* Goodman, 5 C. P. D. 128. If the attestation clause states that the effect of the bill of sale has been explained by the solicitor, this is sufficient, although he may not in fact have done so: *Ex parte* Mercantile Bank, 15 Ch. D. 42. Nor need the affidavit state that such explanation was given: *Ex parte* Belland, 21 Ch. D. 543.

(*f*) Sec. 8.

(*g*) If the sheriff takes goods in execution before the expiration of the seven days, the grantee may set up the bill of sale, though unregistered. See Marples *v.* Hartley, 7 Jur. N. S. 446; 30 L. J. Q. B. 92.

(*h*) Act of 1878, sec. 8. It is apprehended that this section, although

Bill of sale under Act of 1882 void against every one, unless (1) attested, (2) registered within seven days and (3) consideration truly stated, (4) made in accordance with form in schedule, and (5) consideration £30 at least.

4. Every bill of sale to which the Act of 1882 applies must observe the following conditions, namely :—(1), It must be attested by one or more credible witness or witnesses, not being a party or parties thereto (*i*); (2). It must be registered within seven clear days after its execution, or if it is executed in any place out of England, then within seven clear days after the time at which it would in the ordinary course of post arrive in England, if posted immediately after the execution thereof (*k*); (3), It must truly set forth the consideration (*k*); (4), It must be made in accordance with the form in the schedule to the Act of 1882 (*l*); (5), It must be made or given in consideration of a sum not less than thirty pounds (*m*). If the above conditions are not observed, the bill of sale is absolutely void, even against the grantor.

Definition of expression "bill of sale" in Act of 1878.

5. The expression "bill of sale," as used in the Act of 1878, includes bills of sale, assignments, transfers, declarations of trust without transfer, inventories of goods with receipt thereto attached (*n*), or receipts for purchase-moneys of goods (*o*), and other assurances of personal chattels, and also powers of attorney, authorities, or licenses to take possession of personal chattels as security for any debt, and also any agreement, whether intended or not to be followed by the execution of any other instrument, by which a right in equity to any personal chattels, or to any charge or security thereon, is conferred, but does not include the following documents; that is to say, assignments for the benefit of the creditors of the person making or giving the same, mar-

repealed by sec. 15 of the Act of 1882, still applies as regards the consequences of non-registration to unregistered bills of sale made before the commencement of the Act of 1882, by virtue of the saving clause, which provides that the repeal "shall not affect the validity of anything done or suffered under the principal Act before the commencement of this Act."

(*i*) Act of 1882, sec. 10. It need not be attested by a solicitor, sec. 10 of the Act of 1878 being repealed.

(*k*) Sec. 8.

(*l*) Sec. 9.

(*m*) Sec. 12.

(*n*) See Marden *v.* Marden, 7 Q. B. D. 80.

(*o*) Under the Act of 1854 a receipt for the purchase-money of goods was held not to be a bill of sale. Byerley *v.* Prevost, L. R. 6 C. P. 144.

riage settlements, transfers or assignments of any ship or vessel or any share thereof, transfers of goods in the ordinary course of business of any trade or calling, bills of sale of goods in foreign parts or at sea, bills of lading, India warrants, warehouse keepers' certificates, warrants or orders for the delivery of goods, or any other documents used in the ordinary course of business as proof of the possession or control of goods, or authorizing or purporting to authorize, either by indorsement or by delivery, the possessor of such document to transfer or receive goods thereby represented (*p*):

Meaning of expression "bill of sale" in Act of 1882.

6. The expression "bill of sale," as used in the Act of 1882, has the same meaning as in the Act of 1878, except that it does not include documents given otherwise than by way of security for the payment of money.

Meaning of expression "personal chattels" in Acts of 1878 and 1882.

7. The expression "personal chattels," as used in the Acts of 1878 and 1882, means goods, furniture, and other articles capable of complete transfer by delivery, and (when separately assigned or charged) fixtures and growing crops, but does not include chattel interests in real estate, nor fixtures (except trade machinery as hereinafter defined), when assigned together with a freehold or leasehold interest in any land or building to which they are affixed, nor growing crops when assigned together with any interest in the land on which they grow, nor shares or interests in the stock, funds, or securities of any government, or in the capital or property of incorporated or joint-stock companies, nor choses in action, nor any stock or produce upon any farm or lands which by virtue of any covenant or agreement or of the custom of the country ought not to be removed from any farm where the same are at the time of making or giving of such bill of sale (*p*).

Apparent possession.

8. Personal chattels will be deemed to be in the "apparent possession" of the person making or giving a bill of sale, within the meaning of the Act of 1878, so long as they remain or are in or upon any house, mill, warehouse, building, works, yard, land, or other premises occupied by him, or are used and enjoyed by him in any

(*p*) Act of 1878, sec. 4.

place whatsoever, notwithstanding that formal possession thereof may have been taken by or given to any other person (*q*).

Trade machinery.

9. Trade machinery comes within the term "personal chattels" for the purposes of the Acts of 1878 and 1882. "Trade machinery" means the machinery used in or attached to any factory or workshop, exclusive of (1), The fixed motive powers, such as the water-wheels and steam engines, and the steam-boilers, donkey engines, and other fixed appurtenances of the said motive powers; (2), The fixed power machinery, such as the shafts, wheels, drums, and their fixed appurtenances, which transmit the action of the motive powers to the other machinery fixed and loose; (3), The pipes for steam, gas, and water in the factory or workshop. The machinery or effects above excluded from the definition of trade machinery are not personal chattels within the meaning of the Acts. "Factory or workshop" means any premises on which any manual labour is exercised by way of trade, or for purposes of gain, in or incidental to the following purposes or any of them; that is to say, (1), In or incidental to the making any article or part of an article; or (2), In or incidental to the altering, repairing, ornamenting, finishing, of any article; or (3), In or incidental to the adapting for sale any article (*r*).

Certain instruments giving powers of distress to be deemed bills of sale.

10. Every attornment, instrument, or agreement, not being a mining lease, whereby a power of distress is given or agreed to be given by any person to any other person by way of security for any present, future, or contingent debt or advance, and whereby any rent is reserved or made payable as a mode of providing for the payment of interest on such debt or advance, or otherwise for the purpose of such security only, is a bill of sale, within the meaning of both Acts, of any personal chattels which may be seized or taken under such power of distress. But this does not extend to any mortgage of any estate or interest in any land, tenement, or hereditament which the mortgagee, being in possession, shall

(*q*) Act of 1878, sec. 4.
(*r*) Sec. 5.

have demised to the mortgagor as his tenant at a fair and reasonable rent (*s*).

Fixtures or growing crops not to be deemed separately assigned when the land passes by the same instrument.

11. No fixtures or growing crops will be deemed, under either Act, to be separately assigned or charged by reason only that they are assigned by separate words, or that power is given to sever them from the land or building to which they are affixed, or from the land on which they grow, without otherwise taking possession of or dealing with such land or building, or land, if by the same instrument any freehold or leasehold interest in the land or building to which such fixtures are affixed, or in the land on which such crops grow, is also conveyed or assigned to the same persons or person (*t*). And this rule of construction applies to all deeds or instruments including fixtures or growing crops, executed before the 1st January, 1879, and then subsisting and in force, in all questions arising under any bankruptcy, liquidation, assignment for the benefit of creditors, or execution of any process of any court, which takes place or is issued after that date.

12. Where a subsequent bill of sale is executed within or on the expiration of seven days after the execution of a prior unregistered bill of sale, and comprises all or any part of the personal chattels comprised in such prior bill of sale, then, if such subsequent bill of sale is given as a security for the same debt as is secured by the prior bill of sale, or for any part of such debt, it is absolutely void to the extent to which it is a security for the same debt or part thereof, and so far as respects the personal chattels or part thereof comprised in the prior bill, unless it is proved to the satisfaction of the Court having cognisance of the case that the subsequent bill of sale was *bonâ fide* given for the purpose of correcting some material error in the prior bill of sale, and not for the purpose of evading this Act (*u*).

(*s*) Sec. 6. See *supra*, p. 540, note.

(*t*) Sec. 7.

(*u*) Act of 1878, sec. 9. This clause was intended to meet a device which under the Act of 1854 was sometimes adopted, of repeatedly renewing the bill before the expiration of the period allowed for registration, so as to avoid registering at all. Smale *v.* Burr, L. R. 8 C. P. 64; Ramsden *v.* Lupton, L. R. 9 Q. B. 17; *Ex parte* Jackson, 4 Ch. D. 682.

13. The mode of registering bills of sale is as follows, namely: (1), The bill, with every schedule or inventory thereto annexed or therein referred to, and also a true copy of such bill and of every such schedule or inventory, and of every attestation of the execution of such bill of sale, together with an affidavit of the time of such bill of sale being made or given, and of its due execution and attestation, and a description of the residence and occupation of the person making or giving the same, and of every attesting witness to such bill of sale, must be presented to, and the said copy and affidavit must be filed with the registrar within seven clear days after the making or giving of the bill of sale, in like manner as a warrant of attorney in any personal action given by a trader is by law required to be filed; (2), If the bill of sale is made or given subject to any defeasance or condition, or declaration of trust (*x*) not contained in the body thereof, such defeasance, condition, or declaration is to be deemed part of the bill, and must be written on the same paper or parchment therewith before the registration, and must be truly set forth in the copy filed under the Act therewith and as part thereof (*y*). And as regards a bill of sale subject to the Act of 1882, where the affidavit describes the residence of the person making or giving it to be in some place outside the London Bankruptcy district, or where the bill of sale describes the chattels as being in some place outside that district, an abstract of the contents of the bill of sale is to be transmitted by the registrar to the County Court registrar for the district, who is to file it, and allow searches to be made (*z*). Mode of registering bills of sale.

14. If two or more bills of sale are given, comprising in whole or in part any of the same chattels, Priority of bills of sale.

(*x*) The declaration of trust referred to means a declaration of trust in favour of the grantor. Consequently where a bill of sale was made to A., the money being really advanced by B., it was decided that it was not necessary to state this fact on the bill of sale. Robinson *v.* Collingwood, 34 L. J. C. P. 18.

(*y*) Act of 1878, sec. 10.

(*z*) Act of 1882, sec. 11. See the Rules of December, 1882, for the purposes of this section.

they have priority under both Acts in the order of the date of their registration respectively as regards such chattels (*a*).

Renewal of registration.

15. A transfer or assignment of a registered bill of sale need not be registered (*b*).

16. The registration of a bill of sale, under both Acts, must be renewed once at least every *five years*, and if a period of *five years* elapses from the registration or renewed registration of a bill of sale without a renewal or further renewal (as the case may be), the registration becomes void. The renewal of a registration is effected by filing with the registrar an affidavit stating the date of the bill of sale and of the last registration thereof, and the names, residences, and occupations of the parties thereto as stated therein, and that the bill of sale is still a subsisting security; and a form of the affidavit is set forth in Schedule (A.) to the Act of 1878. A renewal of registration does not become necessary by reason only of a transfer or assignment of a bill of sale (*c*).

Bill of sale subject to Act of 1882 void except as against grantor, as regards chattels not in schedule, and chattels of which grantor not the true owner.

Exception of growing crops separately assigned, and fixtures separately assigned, plant, &c., substituted for scheduled things of same kind.

17. A bill of sale to which the Act of 1882 applies, though duly registered under that Act, is void except as against the grantor, (1) in respect of any personal chattels not specifically described in a schedule to be annexed thereto or written thereon; and (2), in respect of any personal chattels specifically described in the schedule of which the grantor is not the true owner at the time of the execution of the bill of sale (*d*). But this does not apply to, (1) any growing crops separately assigned or charged where such crops are actually growing at the time when the bill of sale is executed, nor to, (2) any fixtures separately assigned or charged, or any plant or trade machinery where such fixtures, plant or trade machinery are used in, attached to, or brought upon any land, farm, factory, workshop, shop, house, warehouse, or

(*a*) Act of 1878, sec. 10. Under this section a bill of sale which has been duly registered takes precedence of an unregistered bill of sale of prior date. Conelly *v.* Steer, 7 Q. B. D. 520; Lyons *v.* Tucker, *ib.* 523.

(*b*) Sec. 10.

(*c*) Sec. 11.

(*d*) Secs 4 and 5. See observations on these sections upon p. 718.

other place in substitution for any of the like fixtures, plant or trade machinery specifically described in the schedule to the bill of sale (*e*).

Order and disposition clause in Bankruptcy Act applies to chattels comprised in a bill of sale under Act of 1882, but not to bills of sale under Act of 1878 only.

18. Chattels comprised in a bill of sale to which the Act of 1882 applies, and which is duly registered under that Act, are liable, notwithstanding the registration, to be seized and sold in the event of the grantor (if a trader) becoming bankrupt while the chattels remain in his possession, under the order and disposition clause of the Bankruptcy Act, 1869 (*f*). But chattels comprised in a bill of sale to which the Act of 1878 applies but the Act of 1882 does not apply, are exempt from the operation of the order and disposition clause (*g*).

Chattels in bill of sale liable to seizure in certain events only.

19. Personal chattels assigned under a bill of sale made on or after the 1st November, 1882, cannot be seized or taken possession of by the grantee for any other than the following causes: (1), If the grantor makes default in payment of the sum or sums of money thereby secured at the time therein provided for payment, or in the performance of any covenant or agreement contained in the bill of sale and necessary for maintaining the security; (2), If the grantor becomes a bankrupt or suffers the goods or any of them to be distrained for rent, rates, or taxes; (3), If the grantor fraudulently either removes or suffers the said goods, or any of them, to be removed from the premises; (4), If the grantor does not, without reasonable excuse, upon demand in writing by the grantee, produce to him his last receipts for rents, rates, and taxes; (5), If execution has been levied against the goods of the grantor under any judgment at law. And the grantor may, within five days from the seizure or taking possession of any chattels on account of any of the above-mentioned causes, apply to the Court, or to a judge in chambers, and such court or judge, if satisfied that by

(*e*) Sec. 6.

(*f*) Act of 1882, sec. 15, repealing sec. 20 of Act of 1878.

(*g*) Act of 1878, sec. 20. It is apprehended that this is so notwithstanding the repeal of that section by sec. 15 of the Act of 1882, it being provided in sec. 3 of the latter Act that that Act shall not apply to duly registered bills of sale (under the Act of 1878), unless the context otherwise requires.

payment of money or otherwise the said cause of seizure no longer exists, may restrain the grantee from removing or selling the said chattels, or may make such other order as may seem just (*h*).

Chattels not to be removed or sold for five days after seizure.

20. All personal chattels seized, or of which possession is taken on or after the 1st November, 1882, under or by virtue of any bill of sale (whether registered before or after that day), must be allowed to remain on the premises where they were so seized or so taken possession of, and cannot be removed or sold until after the expiration of five clear days from the day they were so seized or so taken possession of (*i*).

Bill of sale not to protect chattels against poor and parochial rates.

21. A bill of sale to which the Act of 1882 applies is no protection in respect of personal chattels included in such bill of sale which but for such bill of sale would have been liable to distress under a warrant for the recovery of taxes and poor and other parochial rates (*k*).

Inspection of registered bills of sale.

22. Any person may at reasonable times search the register, on payment of a fee, and make extracts of certain particulars (*l*).

Result of decisions on Act of 1854 as to fixtures.

Under the Act of 1854, fixtures were included in the definition of personal chattels without any qualification, and the question arose in several cases whether a mortgage of land including fixtures was liable to registration on that account. The result of the decisions was that a mortgage of freeholds or leaseholds, and the fixtures attached, or of freeholds or leaseholds without additional words (the effect of which would be to carry the fixtures also), which contained no power to sell or sever the fixtures, or otherwise deal with them as a separate property, did not require to be registered; whereas a mortgage of fixtures as a separate property, either by being assigned without the freehold or leasehold interest, or by being assigned in connection with the leasehold interest, as to the leaseholds for the residue of the term, and as to the fixtures absolutely, or by being assigned in connection with the leasehold

(*h*) Sec. 7.
(*i*) Act of 1882, sec. 13.
(*k*) Sec. 14.
(*l*) Sec. 16.

interest, but with power to sell or sever them, required registration (*m*).

Growing crops.

"Growing crops" were not mentioned in the Act of 1854, and it was held that they were not personal chattels within its meaning (*n*). But if the grantor subsequently to the execution of the deed severed the crops and became bankrupt before possession had been taken by the grantee, they passed to the trustee in bankruptcy if the deed had not been previously registered as a bill of sale (*o*).

Effect of enactments as to fixtures and growing crops.

The effect of the Acts of 1878 and 1882, as to the cases in which fixtures and growing crops are to be treated as personal chattels, may be thus stated:—

1. As to instruments made before 1879.

(1.) Whenever by any instrument executed before the 1st January, 1879, and now subsisting, an owner (*p*) of fixtures of any description has assigned or charged them separately, and the instrument contains no conveyance, assignment, or charge of any interest in the land or building to which the fixtures are attached, such an instrument is a bill of sale, and ought to have been registered under the Act of 1854; but if the instrument contains a conveyance, assignment, or charge of some freehold or leasehold interest in the land or building in favour of the same person or persons, such instrument need not be registered, although the fixtures may have been assigned by separate words, or a power may have been given to the grantee to sever them.

2. Instruments made after 1878 must be registered, if fixtures or crops are assigned separately.

(2.) Whenever by an instrument executed subsequently to 1878, an owner of fixtures of any description, or of growing crops, assigns or charges them separately without including therein any interest in the land or building to which they are attached, or the land on which they grow,

(*m*) Mather *v.* Fraser, 2 K. & J. 536; Waterfall *v.* Penistone, 6 El. & Bl. 886; Whitmore *v.* Empson, 23 Beav. 313; Hawtry *v.* Butlin, L. R. 8 Q. B. 290; *Ex parte* Daglish, L. R. 8 Ch. 1072; *Ex parte* Barclay, L. R. 9 Ch. 576; Meux *v.* Jacobs, L. R. 7 H. L. 481; *In re* Eslick, L. R. 4 C. D. 503; *Ex parte* Brown, 9 Ch. D. 389; *Ex parte* Moore and Robinson's Banking Company, 14 Ch. D. 379.

(*n*) Branton *v.* Griffits, 2 C. P. D. 212.

(*o*) *Ex parte* National Mercantile Bank, 16 Ch. D. 104.

(*p*) The term "owner" in this and the following paragraphs includes a lessee or tenant who has a right to remove fixtures as against his landlord.

such instrument is a bill of sale, and must be registered under the Act of 1878, or the Act of 1882.

3. *Secus* if assigned with a freehold or leasehold interest in land, except as to trade machinery.

(3.) Whenever by an instrument executed subsequently to 1878, an owner of fixtures (except trade machinery as defined by the Act of 1878), or of growing crops, assigns or charges them, and by the same instrument assigns or charges to the same person or persons any freehold or leasehold interest in the land or building to which such fixtures are attached, or in the land on which the crops are growing, then, although such fixtures or crops may be assigned by separate words, or a power may be given to sever them from the land or building, such instrument will not be required to be registered.

4. Instrument made after 1878, assigning trade machinery must be registered.

(4). Whenever by an instrument executed subsequently to 1878, "trade machinery" as defined by the Act of 1878 is assigned or charged, either separately or in connection with any interest in the building to which it is affixed, or the building itself is conveyed, assigned, or charged, without any express mention of the trade machinery, but so as to pass such machinery as appurtenant thereto, such instrument is a bill of sale so far as regards the trade machinery, and requires registration.

As to fixtures attached to copyhold land.

It will be noticed that the Act of 1878 omits all mention of fixtures when assigned or charged in connection with *copyhold* land or buildings. It is apprehended, however, that the same rules will apply to copyholds, so that if fixtures attached to a copyhold building are mortgaged separately, the instrument will require registration, but a conditional surrender, or equitable mortgage by deed or writing, of the land or building, either with or without express mention of the fixtures, will be good against creditors, &c., without registration, except as regards trade machinery within the meaning of section 5.

What is necessary to take the chattels out of the apparent possession of grantor.

The Act of 1878 (like the Act of 1854) makes the unregistered bill of sale void, if the goods remain in the possession or *apparent* possession of the grantor. What is necessary in order to put an end to the grantor's apparent possession has been the subject of several decisions, from which it will be seen that the grantee by himself or his agent must obtain actual possession, and exclude the grantor from the use and enjoyment of

them. In a case where an assignee of furniture sent a person into the house to take and keep, and who took and kept possession, but the assignor down to the date of his bankruptcy continued to live in the house and use the furniture as before, it was held that the furniture was in the apparent possession of the bankrupt within the meaning of the Bills of Sale Act (*q*). In *Lewis* v. *Henderson* (*r*), the holder of a bill of sale took possession of the furniture by sending in a broker's man, who remained in the house and slept in an upper room, but did not remove the furniture nor interfere with the use of it by the grantor. At a subsequent time placards were posted in the neighbourhood of the house, announcing a sale of the furniture on a specified day, but there was nothing in them from which it could be inferred that the sale was not made by the grantor. It was held that the possession taken by the grantee was only formal. And in another case, the grantees endeavoured unsuccessfully to get possession of the goods, and it was held, though such endeavour would have been sufficient under the Bankruptcy Act, that it did not satisfy the requirements of the Bills of Sale Act (*s*). But the mere fact of the goods remaining in the house where the grantor resides is not fatal, if they have ceased to be in his actual or apparent possession. Thus, in *Smith* v. *Wall* (*t*), the mortgagee put a man into possession in the house of the mortgagor; the doors were kept locked, and the business of the mortgagor was stopped, and the key was kept by the man in possession. On a subsequent day, printed notices announcing a sale by auction of the goods were posted outside the house and in places about the neighbourhood, and the catalogues stated that the sale would take place under the bill of sale. The debtor remained on the premises contrary to the officer's wishes, as he said he could not get lodgings elsewhere. Between the issuing of the notices and the sale an execution against the debtor was put in, the bailiff pro-

Cases on this subject.

(*q*) *Ex parte* Hooman, L. R. 10 Eq. 63.

(*r*) L. R. 6 Ch. 626; see also Seal *v.* Claridge, 7 Q. B. D. 516.

(*s*) Ancona *v.* Rogers, 1 Ex. D. 285.

(*t*) 18 L. T. N. S. 182. See also Gough *v.* Everard, 2 H. & C. 1, 12.

curing admission by knocking at the door, and when it was opened by forcing his way in. It was held that the goods were not in the actual possession of the grantor, and therefore not within the provisions of the Bills of Sale Act. In another case (*u*), the grantor was tenant of the rooms where the goods were kept, but did not reside there. Having made default, he delivered the keys of the room to the grantee, who put his name on some of them; none, however, were removed. The goods were decided not to be in the apparent possession of the grantor. So also goods are not in the apparent possession of the grantor if they are in the actual possession of the sheriff under an execution issued by the grantee, or by a third person (*x*).

What is a sufficient setting forth of the consideration.

With respect to what is a sufficient setting forth of the consideration to satisfy the requirements of the Acts, it has been decided (1), that money in fact owing from the mortgagor to the mortgagee may be properly stated as a sum of money then advanced and paid, it not being necessary that the form should be gone through of first paying off the debt and then readvancing the money (*y*); (2), that if the money expressed to be paid, or a part of it, is in fact, by the direction of the mortgagor, applied in payment of actual debts then owing from him, this does not render the deed void (*z*); but (3) that if part of the money is retained by the mortgagee for interest or a bonus (*a*), or to pay some debt not yet due (*b*), or even to pay the expense of preparing the mortgage deed, that expense not being in fact a debt due at the time, but one which does not arise until after the mortgage is complete (*c*), the bill of sale is void.

Formalities to be observed under Registration Act.

It now only remains to mention some cases which have been decided in reference to the formalities connected with registration. These decisions were princi-

(*u*) Robinson *v.* Briggs, L. R. 6 Exch. 1.

(*x*) *Ex parte* Saffery, 16 Ch. Div. 668.

(*y*) Credit Company *v.* Pott, 6 Q. B. D. 295; *Ex parte* Mercantile Bank, 15 Ch. D. 42; *Ex parte* Bolland, 21 Ch. D. 543.

(*z*) Hamlyn *v.* Belteley, 5 C. P. D. 327.

(*a*) *Ex parte* Charing Cross, &c., Bank, 16 Ch. D. 35.

(*b*) *Ex parte* Rolph, 19 Ch. D. 98.

(*c*) *Ex parte* Firth, 19 Ch. D. 419. It is difficult to reconcile this decision with *In re* Challoner, 16 Ch. D. 260. See also *Ex parte* Carter, 12 Ch. D. 908; Hamilton *v.* Chain, 7 Q. B. D. 319; *Ex parte* Firth, 19 Ch. D 419.

pally under the Act of 1854, but are equally applicable to registration under the new Act.

Occupation of assignor and attesting witnesses must be stated in affidavit.

The affidavit to be filed with the bill of sale must state the residence and occupation of the assignor and every attesting witness. "Gentleman" is not a sufficient description of a solicitor or of a solicitor's clerk (*d*), or of a clerk in the audit office (*e*), or of any person having a fixed profession, business, or avocation (*f*); but it is not necessary to mention an avocation which has only been temporarily or casually followed, or one in which he is not at present actively engaged, being out of employment (*g*). A lessee and manager of a theatre, or a merchant, is not properly described as "esquire" (*h*), nor a clerk in an accountant's department as an "accountant" (*i*). On the other hand, a clerk in the Admiralty has been held to be sufficiently described as a government clerk (*k*); and a grantor who had been in business until a few weeks before the bill of sale and was then in treaty for another business, was held to be properly described as widow (*l*).

Cases of insufficiency of description.

Residence within meaning of Act.

The residence meant by the Act is the place where the person carries on business and can be found during the day, not the place where he merely sleeps at night (*m*). Where a house is in a street, the No. must be accurately stated (*n*); but if the description given is such as cannot mislead creditors, an unimportant mistake will not be fatal, as where New Street, Blackfriars, was stated as in the county of Middlesex instead of in the city of London (*o*).

(*d*) Tuton *v.* Sanoner, 4 Jur. N. S. 365; 27 L. J. Ex. 293; Dryden *v.* Hope, 9 W. R. 18.

(*e*) Allen *v.* Thomson, 2 Jur. N. S. 45.

(*f*) Adams *v.* Graham, 33 L. J. Q. B. 71; Beale *v.* Tenant, 6 Jur. N. S. 628.

(*g*) Brodrick *v.* Scale, L. R. 6 C. P. 98; Smith *v.* Cheese, 1 C. P. D. 60; Morewood *v.* South Yorkshire Company, 28 L. J. Ex. 114.

(*h*) *Ex parte* Hooman, L. R. 10 Eq. 63; *Re* O'Connor, 27 L. T. 27.

(*i*) Larchin *v.* North-Western Deposit Bank, L. R. 8 Exch. 80.

(*k*) Grant *v.* Shaw, L. R. 7 Q. B. 700.

(*l*) See *Re* Esther Davey, W. N. 1881, pp. 56, 109.

(*m*) Attenborough *v.* Thompson, 3 Jur. N. S. 1307; Blackwell *v.* England, 8 El. & Bl. 541; Briggs *v.* Moss, L. R. 3 Q. B. 268; Hewer *v.* Cox, 30 L. J. Q. B. 73; Blount *v.* Harris, 4 Q. B. D. 603.

(*n*) Murray *v.* Mackenzie, L. R. 10 C. P. 625.

(*o*) Hewer *v.* Cox, 30 L. J. Q. B.

Description of company.

An affidavit filed with a bill of sale, describing a company by its name, and stating the address of its principal office, is a sufficient compliance with the Act (*p*).

Affidavit must contain the description either expressly or by reference.

It is not sufficient that the bill of sale contains a description of the residence and occupation of the assignor and the attesting witnesses: the affidavit filed with the bill of sale must contain such description also, either expressly or by reference. Thus it is not sufficient to state in the affidavit that the grantor is the person named in the bill of sale unless it be averred that he is truly described therein (*q*).

Description of residence of grantor.

The description of the residence of the grantor to be stated in the affidavit, should be his residence at the time of swearing the affidavit, and not at the time of executing the bill of sale (*r*).

Affidavit must state that attesting witness was present.

The affidavit must also state that the attesting witness was present at the time of the execution by the grantor and witnessed the due execution by him (*s*).

Where there are two residences.

If the donor has two residences he is not sufficiently described in the bill of sale and affidavit if only one of the residences is therein mentioned (*t*).

III. *In what cases, having regard to the Bills of Sale Acts, a gift or sale of personal chattels is liable to be avoided under the statute* 13 *Eliz., or the trustee of a bankrupt can dispose of chattels in his possession as reputed owner under the order and disposition clause of the Bankruptcy Act.*

Twyne's case.

In Twyne's case, an assignment by a debtor of his goods to one of his creditors was adjudged fraudulent

73; *Ex parte* M'Hattie, 10 Ch. D. 398.

(*p*) Shears *v.* Jacob, L. R. 1 C. P. 513.

(*q*) Hatton *v.* English, 7 El. & B. 94; 26 L. J. Q. B. 161; Pickard *v.* Bretts, 29 L. J. Ex. 18; see also Wilcoxon *v.* Searby, 29 L. J. Ex. 154.

(*r*) Button *v.* O'Neill, 4 C. P. D. (C. A.) 354. But in a case where between the date of the execution of the bill of sale and the date of the affidavit, the maker left his residence and sailed for America, it was held that the affidavit which described him as in the bill of sale was sufficient: *In re* Hewer, 21 Ch. D. 571.

(*s*) Ford *v.* Kettle, W. N. 1882, p. 90; *Ex parte* Knightley, W. N. 1882, p. 99; Sharpe *v.* Birch, 8 Q. B. Div. p. 111.

(*t*) Wallis *v.* Smith, W. N. 1882, p. 77.

and void against another creditor under the Act 13 Eliz. c. 5, on the ground (among others) that the grantor was permitted to retain possession. But in this and subsequent cases, the continuance in possession was treated as a mark only, and not as conclusive evidence of fraud; and where such possession was consistent with the terms of the deed, and the nature of the transaction, as in the case of a mortgage, the suspicion of fraud was rebutted, and the transaction could not be impeached under the Act of Elizabeth (*a*).

Alienation of chattels by registered bills of sale protected against 13 Eliz. c. 5.

But Act applies to other cases.

The Act 13 Eliz. c. 5, and the doctrine established in Twyne's case as regards the effect of the continuance in possession of the grantor, has been practically superseded by the enactments requiring registration. If, however, a gift or sale is carried into effect by mere delivery of the goods so as not to be within the operation of the Bills of Sale Acts, the Act of Eliz. would still apply, and if the donor or vendor after such delivery was allowed to retake and to remain in possession, the *primâ facie* presumption of fraud would require to be rebutted by evidence of *bona fides*. A *bonâ fide* agreement that the vendor should retain the goods on hire would be sufficient (*b*).

Actual fraud invalidates bills of sale, and voluntary bills of sale void if donor insolvent.

Actual fraud will always invalidate an alienation, whether by registered bill of sale or otherwise, and a voluntary bill of sale of chattels whether registered or not, like any other voluntary conveyance of real or personal property, is under the Act of Elizabeth fraudulent and void against creditors, if the donor is at the time of making it in insolvent circumstances (*c*).

Although marriage is a valuable consideration, a settlement will be void under the Act of Elizabeth if the celebration of marriage is made part of a scheme for defeating the rights of creditors (*d*).

Order and disposition.

The Bankruptcy Act, 1869, includes, as part of the

(*a*) 3 Rep. 80. Edwards *v.* Harben, 2 T. R. 587; Martindale *v.* Booth, 3 B. & Ad. 498; Cooke *v.* Walker, 3 W. R. 357; Weaver *v.* Joule, 3 C. B. (N. S.) 309; Macdona *v.* Swiney, 8 Ir. C. L. R. 73. See also Wooderman *v.* Baldock, 6 Taunt. 676.

(*b*) Byerley *v.* Prevost, L. R. 6 C. P. 144. See also Kidd *v.* Rawlinson, 2 Bos. & Pul. 59.

(*c*) See Vol. 2, Settlements.

(*d*) Columbine *v.* Penhall, 1 Sm. & Giff. 228; see also Penhall *v.* Elwin, 1 Sm. & Giff. 258; Bulmer *v.* Hunter, L. R. 8 Eq. 46.

clause in Bankruptcy Act applicable to bills of sale by way of security,

property divisible among the creditors of the bankrupt, "all goods and chattels being at the commencement of the bankruptcy in the possession, order, and disposition of the bankrupt, *being a trader*, by the consent and permission of the true owner of the goods and chattels, of which the bankrupt is reputed owner, or of which he has taken upon himself the sale or disposition as owner."

Previously to the passing of the Bills of Sale Act, 1878, it was decided that a registered bill of sale was no protection, as regards personal chattels not being fixtures comprised in it, against the operation of the order and disposition clause in the Bankruptcy Act (*e*); and that it made no difference for the purpose of this enactment that the bill of sale was a mortgage, and that the mortgagor's possession was in accordance with its terms (*f*). Section 20 of the Act of 1878 gave an express protection against the order and disposition clause to bills of sale made on or after the 1st January, 1879, and duly registered, but that section has been repealed by section 15 of the Act of 1882 as regards instruments to which the last-mentioned Act applies. It follows that as regards personal chattels not being fixtures comprised in a bill of sale given by a trader before the 1st January, 1879, or comprised in a bill of sale given by a trader by way of security for money on or after the 1st November, 1882, the order and disposition clause remains in force, notwithstanding that such bill of sale may be duly registered.

but not to bills of sale between 1st January, 1879, and 1st November, 1882.

Does not apply to fixtures.

The order and disposition clause does not apply to chattels which have acquired the character of fixtures, whether the premises to which they are attached be freehold or leasehold, and whether as between landlord and tenant the fixtures are the absolute property of the landlord, or are removable by the tenant, and whether they are disposed of by the same instrument with the land, or separately (*g*).

Does not apply to

If a tradesman in the ordinary course of his business

(*e*) Stansfeld *v.* Cubitt, 2 D. & J. 222.

(*f*) Freshney *v.* Kerrick, 1 H. & N. 653, 26 L. J. Ex. 129; Spackman *v.* Miller, 9 Jur. N. S. 50.

(*g*) *Ex parte* Barclay, 5 De G. M. & G. 403; Whitmore *v.* Empson, 23 Beav. 313; Mather *v.* Fraser, 2 K. & J. 536; Walmisley *v.* Milne, 29 L. J. (N. S.) C. P. 97.

has in his possession the goods of customers, such possession does not constitute him reputed owner, and the goods will not pass to the trustee on his bankruptcy. Thus, books deposited by the owner with a bookseller, and kept by him as a part of his general stock, and sold on commission, are not in the order and disposition of the bookseller (*gg*). So books left with a publisher for sale in the usual course of trade (*h*), and furniture hired by an hotel keeper (*i*), do not, upon his bankruptcy, pass to the trustee. goods retained by mortgagor in the usual course of trade.

So also carriages kept on the premises of a coachmaker for the true owner, although they may be placed in his front window and actually sold, are not in his order and disposition, as it is the custom of coachmakers to keep carriages after they are made and to exhibit them for display (*ii*). So if a ship in course of construction is in the yard of the shipbuilder, or goods are being manufactured, such ship or goods if purchased are not in the order and disposition of the shipbuilder or manufacturer (*j*). And in a case where a person advanced money on a ship in course of construction and took an assignment of such ship by way of mortgage to secure the repayment of the advance, it was held that the mortgage was good as against the assignees in bankruptcy of the shipbuilder (*k*). Carriages kept by coachmaker.

There are also other instances in which custom will take the case out of the rule of reputed ownership. Thus where farming produce was purchased, and the price was paid before the bankruptcy, but it appeared to be the custom of farmers to leave such produce upon the farm of the seller until it suited the convenience of the buyer to take it away, it was held that this custom exempted such produce from passing to the assignees under the law of reputed ownership (*l*); and a similar Farming produce left on farm after sale.

(*gg*) Whitfield *v.* Brand, 16 M. & W. 282.

(*h*) Greenwood, *Ex parte* Thickbroom, 6 L. T. N. S. 558; see also *Ex parte* Wingfield, 10 Ch. D. 591.

(*i*) Crawcourt *v.* Salter, W. N. 1881, p. 79.

(*ii*) Bartrum *v.* Payne, 3 Car. & P. 175.

(*j*) Holderness *v.* Rankin, 28 Beav. 150; Swainston *v.* Clay, 4 Giff. 187.

(*k*) Swainston *v.* Clay, *ubi suprà*.

(*l*) Terry, *In re*, 11 W. R. 113.

decision was given in a case where butts of whisky were, in accordance with the custom of the trade, allowed to remain in the vendor's bonded warehouse after a sale (*m*).

Goods in possession of bankrupt on a contract of hiring.

Where a trader sells chattels and continues in possession on a contract of hiring and then becomes bankrupt, the goods will pass to the trustee in bankruptcy, unless the change of ownership has been made notorious (*n*), or unless the sale has been carried into effect by a bill of sale registered under the Bills of Sale Act, 1878 (*o*), or unless it is a well-known custom in the trade for goods of that description to be held on hire. And where there is no relation of vendor and purchaser, but the owner of chattels lets them to a trader who becomes bankrupt, the right of the owner as against the trustee in bankruptcy will still depend on whether such taking on hire is in accordance with notorious usage (*p*).

Antenuptial settlement of personal chattels supported against husband's bankruptcy.

An antenuptial settlement whereby furniture or other chattels belonging either to the wife or the husband are assigned to a trustee in trust for the wife for her separate use is good against the trustee in bankruptcy of the husband, although at the date of the bankruptcy the goods are in the house in which they both reside (*q*), and the deed need not be registered, being excluded from the operation of the Bills of Sale Act.

Post-nuptial settlements of personal chattels.

A *bonâ fide* post-nuptial settlement made by a husband for the benefit of his wife, of furniture and other household effects which are in his possession at the date of the deed, is good, without any alteration of possession, and could not be defeated by his creditors, either under the 13 Eliz. c. 5, or in the event of his future bankruptcy, provided the settlement is duly registered in compliance with the provisions of the Bills of Sale Act (*r*).

(*m*) *Ex parte* Watkins, 8 Ch. 520; *In re* Matthews, 1 C. D. 501.

(*n*) Lingard *v.* Messiter, 1 B. & C. 308; Lingham *v.* Biggs, 1 Bos. & Pul. 384; *Ex parte* Lovering, L. R. 9 Ch. 621.

(*o*) Sec. 20.

(*p*) Horn *v.* Baker, 9 East, 215; Rufford *v.* Bishop, 5 Russ. 346; *Ex parte* Powell, 1 C. D. 501; Mullet *v.* Green, 8 Car. & P. 382. See *In re* Hill, 1 C. D. 503, n.

(*q*) Simmons *v.* Edwards, 16 M. & W. 838; see also Haselinton *v.* Gill, 3 T. R. 620; 1 R. & C. 666.

(*r*) Ashton *v.* Blackshaw, L. R. 9 Eq. 510; *Ex parte* Cox, L. R. 1 C. D. 302.

Sale by husband of his furniture to a purchaser who settles it on the wife for her separate use.

If during the coverture furniture and other household effects of the husband, which are in the joint possession of himself and his wife, are sold by him to a purchaser who then settles them on the wife for her separate use, such a settlement would, it is apprehended, be good as against the husband's creditors without any change of possession, if the sale is carried into effect by a bill of sale duly registered under the Act, and such bill of sale is followed by the settlement. The settlement would not require to be registered, as the settlor was never in possession of the goods.

In order to come within the order and disposition clause the goods must be in bankrupt's possession with consent of true owner.

In order to confer on the trustee in bankruptcy a right to sell the goods under the order and disposition clause, they must be in the bankrupt's possession as reputed owner at the time of the bankruptcy, with the *consent* of the true owner. If therefore the real owner has withdrawn his consent and taken steps to take possession, even though he may not have succeeded owing to the refusal of the debtor to give them up or otherwise, the title of the trustee will be excluded (*s*). So also if the debtor has obtained possession of goods fraudulently, the right of the defrauded person to get them back is not defeated by the former's bankruptcy, unless the latter has known of the fraud for some time before the bankruptcy and delayed unreasonably to assert his right (*t*). In this respect there is an important difference between the "apparent possession" mentioned in the Bills of Sale Act, 1878, and "order and disposition" under the Bankruptcy Act.

Property held by bankrupt in trust excepted from Bankruptcy Act.

Property held by the bankrupt in trust for any other person is expressly exempted from the Bankruptcy Act (*u*).

Order and disposition clause does not apply where possession is obtained or demanded without notice between act of bankruptcy and adjudication.

Whenever possession is obtained, or possession is demanded, between the act of bankruptcy of the debtor and the date of the adjudication without notice on the part of the grantee of such act of bankruptcy, the order and disposition clause of the Bankruptcy Act will not

(*s*) Smith *v.* Topping, 5 B. & Ad. 674; *Ex parte* Harris, L. R. 8 Ch. 48; *Re* Eslick, 4 C. D. 496; Taylor *v.* Eckersley, 5 C. D. 740.

(*t*) Load *v.* Green, 15 M. & W. 216; 15 L. J. Ex. 113.

(*u*) 32 & 33 Vict. c. 71, s. 15.

apply, as such possession or demand would be a dealing with the bankrupt within the meaning and protection of the 94th section, sub-section 3, of the Bankruptcy Act, 1869, which provides that nothing shall render invalid any contract or dealing with any bankrupt made in good faith, and for valuable consideration, before the date of the order of adjudication, by a person not having at the time of making such contract or dealing notice of any act of bankruptcy, committed by the bankrupt, and available against him for adjudication (*x*). And the owner may avail himself of this clause, although he may have been informed before taking possession that an act of bankruptcy is in contemplation (*y*).

IV. *Under what circumstances a bill of sale of personal chattels is an act of bankruptcy.*

67th section of Bankruptcy Act, 1849.

The 67th section of the Bankruptcy Act, 1849, provided that if any trader should procure himself or his goods to be taken in execution, or make any fraudulent grant or conveyance of any of his lands, tenements, goods, or chattels, or make any fraudulent gift, delivery, or transfer of any of his goods or chattels, such trader procuring or making the same with the intent to delay or defeat his creditors, should be deemed to have thereby committed an act of bankruptcy; and by the 70th section of the Bankruptcy Act, 1861, all such acts and fraudulent gifts, &c., by persons *not being traders*, were also made acts of bankruptcy.

What is act of bankruptcy under Bankruptcy Act, 1869.

The Bankruptcy Acts, 1849 and 1861, are repealed by the 32 & 33 Vict. c. 83, and from the 1st of January, 1870, the law of bankruptcy is regulated by the Bankruptcy Act, 1869 (*z*), by the 6th section of which it is enacted that the debtor shall be regarded as having committed an act of bankruptcy if he has in England or elsewhere made a fraudulent conveyance,

(*x*) See 12 & 13 Vict. c. 106, s. 133; Brewin *v.* Short, 5 E. & B. 227; Graham *v.* Furber, 14 C. B. 134.

(*y*) *Re* Wright, 3 C. D. 70.

(*z*) 32 & 33 Vict. c. 71.

gift, delivery, or transfer of his property, or of any part thereof. There can be no doubt that the cases decided under the 67th section of the Bankruptcy Act, 1849, will be taken as authorities for the interpretation of this part of the 6th section of the Bankruptcy Act, 1869; and it has been held that this section equally applies to traders and non-traders (*a*).

Conveyance of all a trader's effects to secure an antecedent debt, an act of bankruptcy.

It has been long settled that a conveyance by a trader of all his effects, or of all his effects with a colourable or trifling exception, to one of his creditors to secure an antecedent debt, is an act of bankruptcy, although there may be no *actual* fraud, on the ground that the very nature of the transaction is such as to prevent him from carrying on his trade (*b*). In *Lindon* v. *Sharpe* (*c*), a trader assigned certain effects to the public officer of a banking company to secure the amount due on an overdrawn account. The bill of sale did not on the face of it purport to assign all the debtor's effects, but it appeared in fact that he had no other property, and that the bank knew that such was the case. The deed was held to be an act of bankruptcy, and void against the assignees.

Sale to a *bonâ fide* purchaser of all a trader's effects not an act of bankruptcy nor a mortgage to secure a present advance.

But an absolute sale to a *bonâ fide* purchaser of the whole of a trader's stock in trade is not an act of bankruptcy (*d*). So also a mortgage of the whole of a trader's stock in trade to secure a present advance is a valid transaction, and it makes no difference that the deed enables the mortgagee to seize after-acquired property, or that the advance bears a small proportion to the value of the goods assigned (*e*). It has been held, moreover, that a mortgage which on the face of it appears to be made to secure an existing debt may be supported by evidence that it was made in pursuance of an

(*a*) *In re* Wood, L. R. 7 Ch. 302.

(*b*) Siebert *v.* Spooner, 1 M. & W. 714; Lindon *v.* Sharpe, 6 Man. & Gr. 894; Smith *v.* Cannan, 2 El. & B. 35; *Ex parte* Foxley, L. R. 3 C. A. 515; *Ex parte* Payne, 11 Ch. D. 539.

(*c*) *Ubi suprà.*

(*d*) Baxter *v.* Pritchard, 1 Ad. & El. 456.

(*e*) Hutton *v.* Crutwell, 1 El. & B. 15; Bittleston *v.* Cooke, 6 El. & B. 296; Harris *v.* Rickett, 4 H. & N. 1; Whitmore *v.* Claridge, 31 L. J. Q. B. 141; 33 L. J. Q. B. 87; *In re* Colemere, L. R. 1 Ch. 128; Woodhouse *v.* Murray, L. R. 4 Q. B. Ex. Ch. 27; Mercer *v.* Peterson, L. R. 4 Exch. 104.

agreement entered into at the time of the loan (*f*). But it must be made clear to the Court that the agreement was *bonâ fide*, and that it was not in fact an agreement that the bill of sale should be postponed until the grantor was on the eve of bankruptcy (*g*), or in order to protect his credit (*h*).

What is a substantial exception so as to prevent operation of doctrine.

When a portion of the trader's effects is excluded from the bill of sale, the question has to be decided whether the part so excluded is or is not a substantial part, so as to prevent the operation of the above doctrine, and this must depend on the particular circumstances of each case. In *Ex parte Bailey* (*i*), where a trader executed a bill of sale of certain policies of assurance, and all his credits, together with his books of account (being all his property except his furniture and stock in trade), and it appeared that executions had issued prior to the bill of sale, under which the furniture and stock in trade were seized, it was held that the assignment was void, although the bankrupt might not have been aware when he executed the assignment that the executions had issued. *Turner*, L.J., observed, "I apprehend that the true question is whether there is such an assignment as prevents the trade being carried on; and I agree with the learned Commissioner that carrying on trade means carrying it on in the usual and ordinary course. One reason why an assignment of the entire estate constitutes an act of bankruptcy is because the bankrupt is thereby prevented from carrying on trade, and this reason must equally apply if the assignment be such as to prevent the trade being carried on. Now this bankrupt has assigned all debts and all bills of exchange and promissory notes, and all books of account in which such debts or sums of money are entered; and it is, I think, impossible to say that trade can be carried on in the usual and ordinary course without the books of account evidencing the debts which have been contracted in carrying on the trade." In *Younge* v. *Waud* (*j*), it was

Ex parte Bailey.

Younge *v.* Waud.

(*f*) Harris *v.* Rickett, *ubi suprà*.
(*g*) *Ex parte* Burton, 13 Ch. D. 102.
(*h*) *Ex parte* Kilner, 13 Ch. D. 245.
(*i*) 3 De G. M. & G. 534.
(*j*) 18 Exch. 232.

held that an assignment by way of mortgage by a trader of his stock and implements of trade, where such assignment did not include a moiety of the whole of his effects, was not *per se* an act of bankruptcy, although the effect of putting the instrument in force would be to stop the business. *Pollock*, C.B., said, "The law is not that a man commits an act of bankruptcy by disabling himself from carrying on his business, but that he commits an act of bankruptcy when the necessary result of that act is to defeat or delay creditors who are not the objects of that particular conveyance." In *Hale* v. *Allnutt* (*k*), A., a trader, executed a mortgage of the public-house in which he carried on his business, and his trade and other fixtures and movable property in the house, other than his stock in trade, to B., to secure £570 then due. The value of the property mortgaged was between £300 and £400, and the value of the bankrupt's assets at the time was between £1100 and £1200; his debts amounted to nearly £4000. It was held that the deed was valid. *Jervis*, C.J., observed, "This does not fall within that class of cases in which an assignment has been made of the whole, or the whole with a colourable exception, of the trader's property; the necessary result of which is to defeat and delay creditors by producing absolute present insolvency and incapacity to carry on trade and withdrawing the whole of the property from the reach of the creditors by the ordinary legal remedies" (*l*).

Hale v. Allnutt.

In estimating whether a bill of sale comprised the whole of a trader's property the value of his book debts is to be taken into account (*m*).

Value of book debts to be calculated.

Where a trader assigns all his effects to a creditor in consideration partly of an existing debt, and partly of a new advance, the validity of the transaction depends on whether the object of the transaction is, by means

Where mortgage is partly for old debt and partly for new advance.

(*k*) 13 C. B. 505.

(*l*) See also Smith *v.* Cannan, 2 El. & B. 35; Johnson *v.* Fesemeyer, 3 De G. & J. 13; Mather *v.* Fraser, 2 K. & J. 536; Oriental Banking Company *v.* Coleman, 3 Giff. 11; Smith *v.* Timms, 11 W. R. 381; *Ex parte* Wensley, 1 De G. J. & S. 275; Goodricke *v.* Taylor, 2 De G. J. & S. 135.

(*m*) *Ex parte* Burton, *ubi suprà*; *Ex parte* Field, 13 Ch. D. 106, note.

of the new advance, to enable or assist the trader to continue his trade, or whether the new advance is colourable only, the real intention being to give a security for the past debt. Thus, in *Pennell* v. *Reynolds* (*n*), A., a trader, being indebted to B., executed to him a bill of sale of all his effects to secure the existing debt, and a present advance of £250, and it was held that such a bill of sale was not necessarily an act of bankruptcy. *Willes*, J., observed, "If there is an assignment of property with a real and substantial exception, in the absence of fraud that will not be an act of bankruptcy. In our judgment a present substantial advance of money puts the transaction upon the same footing as an assignment, with a substantial exception of part of the property. It is not necessarily an act of bankruptcy. The advance may be the means of enabling the assignor to go on with his trade, and if so, the transaction may be beneficial to the creditor" (*o*). A bill of sale of all the debtor's property to secure a past debt and future advances is an act of bankruptcy, unless there is an agreement by the grantee to make subsequent advances (*p*).

Forbearance is good consideration.

A forbearance to enforce an existing bill of sale is a good consideration for supporting a subsequent bill of sale of the debtor's whole property to secure the pre-existing debt (*q*).

Bankruptcy Act, 1849, s. 88.

The Bankruptcy Act, 1849 (*r*), provided that no person should be liable to become bankrupt by reason of any act of bankruptcy committed more than twelve months prior to the issuing of any fiat in bankruptcy, or the filing of any petition for adjudication of bankruptcy against him;

Bankruptcy Act, 1869, s. 61.

but by the Bankruptcy Act, 1869 (*s*), it is provided that no person shall be adjudged a bankrupt on any of the grounds mentioned in the 6th section of the last-mentioned Act, unless the act of bankruptcy on which the adjudication is grounded has occurred within six

(*n*) 11 C. B. (N. S.) 709.

(*o*) Hutton *v.* Cruttwell, 22 L. J. Q. B. 78; Bell *v.* Simpson, 2 H. & N. 410; Allen *v.* Bonnett, L. R. 5 Ch. 577; Lomax *v.* Buxton, L. R. 6 C. P. 107; *In re* Winstanley, 1 C. D. 290; *Ex parte* Fisher, L. R. Ch. 636.

(*p*) *Ex parte* Dunn, 17 Ch. D. 26.

(*q*) *Ex parte* Cooper, 10 Ch. D. 313; *Ex parte* Payne, 11 Ch. D. 539.

(*r*) Sec. 88.

(*s*) 32 & 33 Vict. c. 71, s. 61.

months before the presentation of the petition for adjudication.

Assignment of all debtor's property cannot be avoided under 13 Eliz. c. 5, in absence of fraud.

An assignment of the whole of a debtor's property to secure only a pre-existing debt, cannot in the absence of fraud be impeached under the 13 Eliz. c. 5, even when it is provided by the deed that the donor shall remain in possession for a specified period (*t*) ; and although such an assignment is an act of bankruptcy, yet, according to the 61st section of the "Bankruptcy Act, 1869," it could not be avoided by the creditors in the event of the assignor's bankruptcy unless the petition for adjudication is presented within six calendar months from the execution of the deed (*u*).

Fraudulent preference.

It has been long settled that a bill of sale executed in favour of a creditor, though it may not comprise the whole or the greater part of the trader's effects, may be void against other creditors and also an act of bankruptcy, on the ground that it confers on the favoured creditor a fraudulent preference ; and now, by the 92nd section of the "Bankruptcy Act, 1869," it is expressly enacted that every conveyance or transfer of property, or charge thereon made, every payment made, every obligation incurred, and every judicial proceeding taken or suffered by any person unable to pay his debts as they become due from his own monies, in favour of any creditor or any person in trust for any creditor, with a view of giving such creditor a preference over the other creditors, shall, if the person making, taking, paying, or suffering the same become bankrupt within *three* months after the date of making, taking, paying, or suffering the same, be deemed fraudulent and void as against the trustee of the bankrupt appointed under this Act ; but this section shall not affect the rights of a purchaser, payee, or incumbrancer in good faith and for valuable consideration.

Assignment is not a fraudulent preference, unless voluntarily made.

According to the cases on the subject of fraudulent preference decided prior to the "Bankruptcy Act, 1869" (and such cases are authorities for the interpretation of

(*t*) Alton *v.* Harrison, L. R. 4 Ch. 622.

(*u*) Allen *v.* Bonnett, L. R. 5 Ch. 577.

the 92nd section (*v*) of this Act (*x*), provided the bankruptcy takes place within three months), in order to make an assignment void on the ground of fraudulent preference it must be *voluntarily* made (*y*), and the question whether a preference is voluntary is a question of fact to be determined by the jury according to the circumstances of each case (*z*). In *Van Casteel* v. *Booker* (*a* it was laid down that to make a preference given on the eve of bankruptcy valid, it was not necessary that there should be any actual threat or pressure with an immediate power of taking legal steps to enforce it; but the assignees, seeking to impeach the deed, must prove it to be voluntarily made on the part of the bankrupt and in contemplation of his bankruptcy, and if it is made in consequence of the act of the creditor, it is not voluntary.

Johnson *v.* Fesemeyer.

In *Johnson* v. *Fesemeyer* (*b*) it was held that trader on the eve of bankruptcy, yielding to the *bonâ fide* pressure of a creditor, give him a security on part of his property, this is not a fraudulent preference, though both parties may be aware of the impending bankruptcy. To render it invalid there must be a disposition on the part of the debtor to favour that particular creditor, and this is generally shown by the fact that the first step or proposal proceeds from the insolvent debtor. And on appeal, *Chelmsford*, C., said, "The recent cases have placed the law on this subject on a right footing. Formerly it was supposed that in order to prevent a transaction being void as a fraudulent preference it was necessary to show something like coercion or pressure on the part of the debtor, and a reluctant yielding by the creditor. The term 'pressure' has been retained, although it is now only calculated to mislead, as it has been

(*v*) This section applies equally to traders and non-traders (*Ex parte* Blackburn, L. R. 12 Eq. 358); and only to transactions between debtor and creditors in the strict sense of the term. *Ex parte* Kelly, 11 Ch. D. 306.

(*x*) See *Ex parte* Tempest; *In re* Craven, L. R. 6 Ch. 70.

(*y*) See Fidgeon *v.* Sharp, 5 Taunt. 539; Thompson *v.* Freeman, 1 T. R 155; *Ex parte* Bolland, 8 C. D. 230.

(*z*) Cook *v.* Rogers, 7 Bing. 438.

(*a*) 2 Exch. Rep. 691.

(*b*) 25 Beav. 88; S. C. 3 De G. & J. 13; *Ex parte* Aitken, W. N. 1881, p. 126.

decided that the only question in these cases is whether the act is voluntary on the part of the bankrupt, and as *Alderson*, B., explains the term in *Strachan* v. *Barton*, 'a voluntary payment' (and this of course applies equally to the case of any voluntary act of preference) is a payment simply by the act and will of the party making it; and if there is anything to interfere with or control this will, then it is not a voluntary payment" (*c*).

Preference of creditor must be sole motive to impeach transaction.

An assignment, then, made by the debtor on a mere demand or request on the part of the creditor (*d*), or in accordance with a previous agreement (*e*), or at the request not of the creditor, but of the surety for the debtor (*f*), or under a mere apprehension that proceedings might be taken against the debtor for payment, although such apprehension might be entirely groundless (*g*), would be supported as an assignment not voluntarily given. Unless, in fact, it can be proved that the debtor's sole motive in making the assignment was to give the creditor a preference, the transaction cannot be impeached (*h*). In a case, however, where a creditor threatened to bring an action for a debt in consequence of being told by the debtor that he was going to stop payment, and in consequence of such threat, the debtor gave the creditor a security and then became bankrupt, it was held that such security would be void as against the trustee in bankruptcy (*i*).

Bills v. Smith.

In the case of *Bills* v. *Smith* (*j*) it was laid down that "the question whether an intention to defeat the law and to prevent the due distribution of his assets existed in the mind of the trader, is one of fact for the jury. If the act is spontaneous on the part of the debtor, and

(*c*) See also on the subject of fraudulent preference, Hale *v.* Allnutt, 18 C. B. 505; Strachan *v.* Barton, 11 Exch. 647; Brown *v.* Kempton, 19 L. J. C. P. 169; Cook *v.* Pritchard, 5 M. & G. 329; Stanger *v.* Wilkins, 19 Beav. 626; Gore *v.* Lloyd, 12 M. & W. 463; *Ex parte* Fowle, W. Notes, 1872, p. 230.

(*d*) Mogg *v.* Baker, 4 M. & W. 349.

(*e*) *Ex parte* Homan, L. R. 12 Eq. 598.

(*f*) Edwards *v.* Glyn, 2 E. & E. 29.

(*g*) Thompson *v.* Freeman, 1 T. R. 155.

(*h*) *Ex parte* Blackburn, L. R. 12 Eq. 358; *Ex parte* Bolland; *Ex parte* Cherry, L. R. 7 Ch. 24; *In re* Wilkinson, W. Notes, 1881, p. 2.

(*i*) *Ex parte* Hall, W. N. 1882, p. 26.

(*j*) 34 L. J. Q. B. 68.

there are no circumstances to rebut the presumption which arises from the act having been done purely voluntarily on his part, the jury should be told that the preference was fraudulent and wrongful. But if there are circumstances to rebut the presumption, the circumstances should be brought before the jury, and a direction to the jury that, although the transaction was apparently voluntary on the part of the debtor, if the effect of the evidence in their hands is to satisfy them that the desire to give a fraudulent preference was not the motive operating on the trader's mind, they ought to uphold the transaction, is perfectly correct."

Assignment of all debtor's property to secure existing debt only, will not be protected although made under pressure.

It must be borne in mind that an assignment to a particular creditor of the *whole* of a debtor's property, or of the whole with only a colourable exception, to secure only a pre-existing debt, will not be protected, although it may have been made under pressure (*k*).

Voluntary preference not an act of bankruptcy.

Although a voluntary preference of a creditor may be void under the 92nd section, it does not of itself operate as an act of bankruptcy (*kk*).

In a case where the grantor of an unregistered bill of sale advised the grantee to take possession as he was in difficulties, and the grantee accordingly took possession, it was held that the transaction could not be set aside on the subsequent bankruptcy of the grantor, either as a fraudulent preference or under the Bills of Sale Act, as the goods were in the hands of the real owner (*l*).

Bankruptcy Act, 1869, s. 91.

One of the most important sections of the "Bankruptcy Act, 1869," is the 91st, which, amongst other things, avoids all voluntary settlements of property as against the trustee in bankruptcy of the settlor in case he is a *trader* and becomes bankrupt within two years after the date of the deed, however solvent and free from debt he might have been at the date of the settlement. The enactment is as follows: "That any settlement of property made by a *trader*, not being a settlement made before and in consideration of marriage, or made in

Provision as to voluntary settlements made by traders.

(*k*) Newton *v.* Chandler, 7 East, 138; *Ex parte* Wensley, 1 De G. & S. 273; Jones *v.* Harber, L. R. 6 Q. B. 77.

(*kk*) *Ex parte* Stubbins, 17 Ch. D. 58.

(*l*) *Ex parte* Symmons, 14 Ch. D. 693.

favour of a purchaser (*m*) or incumbrancer in good faith and for valuable consideration, or a settlement made on or for the wife or the children of the settlor of property which has accrued to the settlor after marriage in right of his wife, shall, if the settlor becomes bankrupt *within two years* after the date of such settlement, be void as against the trustee of the bankrupt appointed under this Act, and shall, if the settlor becomes bankrupt at any subsequent time within *ten* years after the date of such settlement, unless the parties claiming under such settlement can prove that the settlor was at the time of making the settlement able to pay all his debts without the aid of the property (*mm*) comprised in such settlement, be void against such trustee. Any covenant or contract made by a *trader* in consideration of marriage for the *future settlement* upon or for his wife or children of any money or property wherein he had not at the date of his marriage any estate or interest, whether vested or contingent (*n*), in possession or remainder, and not being money or property of or in right of his wife, shall, upon his becoming bankrupt before such property or money has been actually transferred or paid, pursuant to such contract or covenant, be void against his trustee appointed under this Act." And it is declared that the term "settlement" for the purposes of this section shall include any conveyance or transfer of property.

Covenants by trader in consideration of marriage for future settlement.

V. *The proper mode of framing a bill of sale by way of mortgage, and the operation of bills of sale of after-acquired chattels.*

A bill of sale by way of mortgage must in future be made *in accordance with* the form given in the schedule to the Act of 1882, *i.e.*, it must not contain anything

Proper form of bill of sale by way of mortgage.

(*m*) The word "purchaser" in this section means a buyer in the ordinary commercial sense, and not a purchaser in the strict legal sense. *parte* Hillman, 10 Ch. D. 622.

(*mm*) In estimating such property the good will of a business is not to be taken into account. *In re* Butterworth, 19 Ch. D. 588.

(*n*) As to what is a vested or contingent interest within these words, see Commell *v.* Keith, 3 C. D. 767; *In re* Andrews' Trusts, 7 C. D. 635. See also on the construction of this section, *Ex parte* Huxtable, 2 C. D. 54.

contrary to or inconsistent with that form (*o*). The form is an imperfect one, as it contains no power or licence authorizing the mortgagee to enter, take possession, and sell, for the causes mentioned in sec. 7 of the Act, but only a proviso that there shall be no seizure for any other cause.

In the following precedents the form is followed with such variations only as are necessary to render the security as efficient as the law permits.

What time should be appointed by the deed for the payment of the money.

In a mortgage of land, the time for payment of the money is generally fixed at the expiration of six months from the date of the deed, but in a mortgage of chattels it is desirable to appoint an earlier day, because it is possible that circumstances may happen rendering it necessary for the mortgagee to seize and sell within the six months.

If money is made payable on demand, mortgagee must allow mortgagor reasonable time.

If the money is made payable on demand, and the mortgagee empowered to take possession in case of default in payment upon demand, he must allow the mortgagor a reasonable time to procure the money (*oo*). For this reason, it seems better to fix a stated day for payment, after which possession can be taken without any demand.

Bill of sale of after-acquired chattels.

It has been hitherto a common practice to include in a bill of sale not only particular chattels in the grantor's possession at the time, but also chattels to be subsequently acquired in substitution for or in addition to them.

Effect of licence to seize after-acquired goods at common law.

The only benefit which *at law* could formerly be conferred on the donee under a bill of sale as to after-acquired effects was a power or licence to seize them whenever they came into possession, and the title of the donee was acquired by his actually obtaining possession under the licence; but such a power was revocable by the donor, and had no effect *at law* as against persons claiming under any subsequent assignment from him, which might be exe-

(*o*) It is evident that the form need not be *precisely* followed. For instance, the form comprises only the chattels specifically described in a schedule, but it is clear that the bill of sale would be good, if extended to fixtures, plant, and utensils, afterwards substituted for any of the scheduled things of the same kind (sec. 6), or even, as against the grantee, if it included after-acquired chattels generally (sec. 5).

(*oo*) Toms *v.* Wilson, 32 L. J. Q. B. 33, 382; Brighty *v.* Norton, *ib.* 38; Massey *v.* Sladen, L. R. 4 Exch. 13.

cuted before the donee had obtained actual possession of them (*p*).

In equity, however, a deed made for valuable consideration, and purporting to assign specific effects to be afterwards acquired, and so described as to be capable of being identified, operated as a contract which fastened on the goods directly they came into the grantor's possession, and of which specific performance would be enforced. The instrument therefore in equity passed the property in the goods, when acquired, to the grantee. But equity would not decree specific performance of a contract for the sale or mortgage of goods not specific, and consequently a bill of sale purporting to pass goods not specific was inoperative in equity as well as at law. In accordance with this disinction a bill of sale whereby certain machinery, implements, and things described in a schedule, and which were fixed or placed in or about a certain mill, were assigned by way of mortgage, followed by a declaration that all machinery, implements, and things which during the continuance of the security should be fixed or placed in or about the said mill in addition to or in substitution for the existing machinery, &c., should be subject to the security, was held to be a valid *equitable* mortgage of substituted and added machinery, as against an execution creditor of the mortgagor (*q*); and this decision was followed in another case, where the bill of sale assigned "all the stock in trade, chattels, goods, and effects now being in, upon, or about," a certain dwelling-house and premises, and also "the stock in trade, goods, chattels, and effects which shall or may at any time during the continuance of this security be brought into the aforesaid messuage, &c., or be appropriated to the use thereof either in addition to or in substitution for stock in trade, &c., now being therein" (*r*). On the other hand, a bill of sale by way of mortgage of all the grantor's "household furniture, plate,

A bill of sale of after-acquired chattels, if specific, operates in equity as a contract and passes the property when acquired, to the grantee;

but inoperative as to goods not specific.

Could be assigned in equity if capable of identification.

(*p*) Carr *v.* Acraman, 11 Exch. 566; Congreve *v.* Evetts, 10 Exch. 298; Thompson *v.* Cohen, L. R. 7 Q. B. 527.

(*q*) Holroyd *v.* Marshall, 10 H. L. C. 191; Leatham *v.* Amor, 47 L. J. (Q. B.) 581.

(*r*) Lazarus *v.* Andrade, 5 C. P. D. 318.

linen, china, glass, stock, cattle, horses, farming implements, crops, book-debts, and all other his personal estate and effects then being or thereafter to be upon or about his dwelling-house, farm, and premises situate at Reedham, or elsewhere, in the Kingdom of Great Britain," was held to be void (*s*).

A second bill of sale made for valuable consideration without notice, after the goods have been acquired, will have priority. *Semble.*

But as the assignment is good in equity only, and does not pass the property in the goods at common law, it follows that if the grantor makes a second bill of sale after the goods have come into his possession, in favour of a purchaser or mortgagee for valuable consideration without notice of the first one, the second grantee will have priority over the first, by virtue of the equitable doctrine that where two persons have equal equities the legal title will prevail. It makes no difference in this respect that since the passing of the Judicature Act equitable interests are recognised by all branches of the Court (*t*).

Effect of secs. 4 & 5 of Bills of Sale Act, 1882, as to bill of sale of after-acquired goods.

It remains to consider the effect of sections 4 & 5 of the Bills of Sale Act, 1882, as regards after-acquired goods. By these sections a bill of sale is declared to be void, except as against the grantor, in respect of any personal chattels not specifically described in a schedule, and also in respect of personal chattels so described, of which the grantor was not the true owner at the time of the execution of the bill of sale.

Such a bill of sale good against grantor himself, and his representatives and assigns, but not against execution creditors and trustee in bankruptcy. *Semble.*

It is impossible to express a very confident opinion as to the construction which will be placed by the Court on the words "except as against the grantor." It is assumed that they cannot be taken literally, as meaning that an instrument good against the grantor himself is to be void against all persons claiming under him, including his personal representative, a voluntary donee, and a grantee for valuable consideration with notice. And

(*s*) Belding *v.* Read, 34 L. J. Ex. 212. See also Reeve *v.* Whitmore, 33 L. J. Ch. 63; Cheddell *v.* Galworthy, 6 C. B. (N. S.) 471.

(*t*) The observation of Lopes, J., in Lazarus *v.* Andrade, 5 C. P. D. 320, that "property to be afterwards acquired may be, not only in equity, but also at law, the subject matter of an assignment for value must be understood as merely meaning that the validity of such an assignment must now be recognised by every branch of the Court."

if the bill of sale is to be good against all the above persons, it is difficult, in the absence of any express enactment to that effect, to make a distinction between assigns by deed and assigns by act of law. But the line must be drawn somewhere, and, as the general object of the Acts is to protect creditors, it will probably be held that a bill of sale of after-acquired goods, duly registered and complying in other respects with the requirements of the Act of 1882, will be void against execution creditors and the trustee in bankruptcy of the grantor, if at the time of the execution or bankruptcy the goods remain in his possession, but that its validity, as against the grantor himself, and persons claiming under him by representation or assignment, will remain unaffected.

No. I.

OF CHATTELS.

BILL *of* SALE *of* CHATTELS, *by way of* MORTGAGE.

Parties.

THIS INDENTURE, made the —— day of ——, BETWEEN A. B., of, &c., (*mortgagor*), of the one part, and C. D., of, &c., (*mortgagee*), of the other part, WITNESSETH that in consideration of the sum of £—— (*t*) now paid by the said C. D. to the said A. B. (the receipt whereof the said A. B. hereby acknowledges), the said A. B. (hereinafter called the mortgagor), as beneficial owner, hereby assigns unto the said C. D. (hereinafter called the mortgagee), ALL the chattels and things in or about the messuage or dwelling-house situate, &c. (*describing it*), which are specifically described in the schedule hereunto annexed [*or* written hereon]: [AND ALSO all the chattels and things which at any time during the continuance of this security shall be used in or brought upon the said dwelling-house in substitution for or in addition to any chattels or things specifically described in the said schedule] (*tt*): TO HOLD the same unto the mortgagee by way of security for the payment of the sum of £—— with interest thereon according to the covenant hereinafter contained: AND THE mortgagor hereby covenants with the mortgagee to pay to him on the —— day of —— next (*u*) the sum of £——, with interest thereon after the rate of £—— per cent. per annum, computed from the date of these presents, and also so long after that day as any principal money remains owing under these presents to pay to him interest thereon after the rate aforesaid, by equal half-yearly [*or* quarterly, *or* monthly, *as may be agreed on*] payments, on the —— day of —— and the —— day of —— in every year: AND the mortgagor hereby further covenants with the mortgagee that he will not remove the said chattels and things, or any of

Assignment of chattels to mortgagee to secure payment of principal money and interest.

Covenants by mortgagor to pay principal money, and interest in the meantime half-yearly

not to remove chattels, and

(*t*) This must not be less than £30.

(*tt*) This bill of sale will be void, except as against the grantor and those claiming under him by representation or assignment, in respect of the things described within brackets.

(*u*) This should be (say) a month from the date of the deed. See *supra*, p. 716.

× A bill of sale of personal chattels whereby the grantor "as beneficial owner" assigns the goods as security for money is void under Sec 9 of the Bills of Sale Act 1882 as not being in accordance with the form in the Schedule on the ground that the words "beneficial owner" introduce the implied covenants of section 7 (c) of the Conveyancing Act 1881 which covenants are not in accordance with the form in the Schedule of the Bills of Sale Act 1882. L. J. Rep Vol 55 New Series. 20 Barbour & Stanford. page 341

them, from the said messuage or dwelling-house, without the consent of the mortgagee, and will permit the mortgagee at all reasonable times to enter into the said messuage or dwelling-house, or into any other dwelling-house or place in which the said chattels and things, or any of them, shall happen to be, for the purpose of inspecting the same, and the state and condition thereof: AND ALSO that he the mortgagor will at all times during the continuance of this security keep the said chattels and things insured against loss or damage by fire, in the sum of £—— at least, in the —— Insurance Office, or in some other Insurance Office to be approved of by the mortgagee, and will produce to the mortgagee on demand the policy of such insurance and the receipt for every premium payable in respect thereof (*x*): AND ALSO will at all times during the continuance of this security duly and regularly pay the rent, rates, and taxes payable by him in respect of the said messuage or dwelling-house, and produce to the mortgagee upon demand in writing the last receipt for such rent, rates, or taxes: AND IT IS HEREBY DECLARED, that if default shall be made in payment of the said sum of £——, or the interest thereof on the said —— day of —— next, or if any other default or event mentioned as a cause of seizure in section 7 of the Bills of Sale Act (1878) Amendment Act, 1882, shall be made or happen, then and in any such case, but not otherwise (*y*), it shall be lawful for the mortgagee at any time thereafter, by himself or his agents or servants, to enter into and upon the said messuage or dwelling-house, or other the dwelling-house or place in which the chattels and things hereby assigned shall happen to be, and to seize and take possession of the said chattels and things: AND ALSO, on or at any time after the expiration of five days from such seizure, to sell (*a*) the said

to permit mortgagee to inspect same;

To insure against fire.

to pay rent, rates, and taxes, and produce receipts for same.

Power to mortgagee in case of default, to seize and take possession;

also to sell after default

(*x*) Sect. 19, sub-sect. 2, and sect. 23 of the Conveyancing Act, 1881, apply to personal chattels such as are the subject of this bill of sale, so that a provision enabling the mortgagee to insure in case of the mortgagor's default is unnecessary.

(*y*) There can be no doubt that this is *in accordance with* the form in the schedule to the Act of 1882, and it is unnecessary to add the proviso which is inserted at the end of that form, that proviso being implied in the words "but not otherwise."

(*a*) The power of sale conferred by the Conveyancing Act, 1881, is applicable to a bill of sale of chattels, but as the conditions prescribed by section 20 are different to those which would generally be wished in a bill of sale, it is more convenient to insert an express power.

OF CHATTELS.

chattels and things, or any of them, either by public auction or private contract, with liberty to buy in at any sale by auction, or to rescind or vary any contract for sale, and to resell without being answerable for any loss or diminution in price, and with liberty also to give effectual receipts for the purchase-money, and to do all other acts and things for completing any sale which the mortgagee may think fit: AND IT IS HEREBY DECLARED that the mortgagee shall, with and out of the moneys to arise from any such sale as aforesaid, in the first place pay the expenses attending such sale or otherwise incurred in relation to this security, and in the next place pay the moneys which shall be owing on this security, and shall pay the surplus (if any) to the mortgagor (*b*): AND IT IS HEREBY LASTLY DECLARED that all powers and rights hereby conferred on the mortgagee shall devolve on his executors, administrators, and assigns. IN WITNESS whereof the said parties hereto have hereunto set their hands and seals the day and year first above written.

Trusts of purchase-money.

Powers of mortgagee to devolve on his executors, administrators, or assigns.

THE SCHEDULE ABOVE REFERRED TO.

Signed, sealed, and delivered by the within named A. B. in the presence of me,

E. F. (*add witness's name, address, and description*).

(*b*) It is apprehended that a provision exempting a purchaser from obligation to see that default has been made would be nugatory, and inconsistent with the Act of 1882 and the form thereby prescribed.

No. II.

BILL *of* SALE *by way of* MORTGAGE, *of* FIXTURES, PLANT, *and* EFFECTS *in a* SHOP, *including any* FIXTURES *or* PLANT *to be* AFTERWARDS SUBSTITUTED *for any of the* EXISTING THINGS *of the* SAME KIND (*a*), *the* PRINCIPAL MONEY *being made payable by* MONTHLY INSTALMENTS.

OF PLANT AND EFFECTS IN SHOP, INCLUDING AFTER-ACQUIRED PLANT.

THIS INDENTURE, made, &c. (*date and parties as in last Precedent*): WITNESSETH, that in consideration, &c. (*the receipt, &c.*), THE said A. B. (hereinafter called "the mortgagor"), ~~as beneficial owner~~, hereby assigns unto the said C. D. (hereinafter called "the mortgagee"), ALL the fixtures, plant (*b*), chattels, and things, in or upon or belonging to the messuage and shop situate, &c. (*describe it*), specifically described in the schedule hereunto annexed: AND ALSO all the fixtures and plant which shall or may at any time or times during the continuance of this security, be used in, attached to, or brought upon the aforesaid messuage and shop, or any part thereof, in substitution for any of the like fixtures or plant (*b*) specifically described in the said schedule: [AND ALSO all chattels and things (other than fixtures and plant) which at any time during the continuance of this security shall be used in or brought upon the said messuage and shop, or any part thereof, in substitution for or in addition to any chattels or things specifically described in the said schedule (*c*)], TO HOLD the same unto the mortgagee, by way of security for the payment of the sum of £——, with interest thereon according to the covenant hereinafter contained: AND the mortgagor hereby covenants with the mortgagee to pay to him the sum of £——, with interest thereon, after the rate of £—— per cent. per annum, computed from the date of these presents, on the 1st day of —— next (*d*): PROVIDED ALWAYS that if the mortgagor shall pay to the mortgagee the said principal sum of £—— by equal monthly instalments of £—— each, the first instalment to be paid on the first day of —— next, and the remaining instalments to be paid on

Parties.

Mortgagor assigns fixtures, plant, and effects specified in schedule, and fixtures and plant to be subsequently substituted,

to mortgagee to secure payment of money.

Covenant by mortgagor to pay principal at end of a month with interest.

Proviso that mortgagor may pay by monthly instalments.

(*a*) See Act of 1882, sec. 6.

(*b*) If there is any trade machinery, the words "trade machinery" should be inserted after "plant."

(*c*) The bill of sale is void, except as against the grantor and those claiming under him by representation or assignment, in respect of the things described within brackets. See p. 718, *supra*.

(*d*) This should be one month from the date.

OF PLANT AND EFFECTS IN SHOP, INCLUDING AFTER-ACQUIRED PLANT.

the first day of every subsequent calendar month until the whole principal money shall be paid, and shall on the same monthly days respectively pay interest on the principal sum for the time being remaining unpaid after the rate of £—— per cent. per annum, then and in such case the mortgagee shall accept payment of the said principal sum by such instalments as aforesaid, and shall not enforce the foregoing covenant for payment of the same earlier, unless the mortgagor shall die or become bankrupt before all the said instalments shall have become payable, in which case the whole of the principal money then remaining unpaid shall be recoverable immediately, as if this proviso had not been inserted herein: AND IT IS HEREBY DECLARED that if and whenever the first day of a month shall fall on a Sunday, the instalment and interest payable on that day shall be paid on the following day: AND the mortgagor hereby further covenants with the mortgagee that he will not remove the chattels, fixtures, plant, and things hereby assigned, or expressed so to be, or any part of them, from the said messuage and shop, except in the ordinary course of his trade or business, without the consent of the mortgagee, and will, (*permit the mortgagee to enter to inspect, to insure, to pay rent, rates, and taxes, and to produce receipt, suprà*, p. 721). AND IT IS HEREBY DECLARED that if default shall be made in payment of any instalment of principal money or any interest thereon, on the day hereby appointed for payment thereof, or if any other default or event mentioned as a cause of seizure in section 7 of the Bills of Sale Act (1878) Amendment Act, 1882, shall be made or happen, then and in any such case, but not otherwise, it shall be lawful for the mortgagee, at any time thereafter, by himself or his agents or servants, to enter into and upon the said messuage and shop, or any part thereof, or any other place in which the things hereby assigned, or any of them, shall happen to be, and to seize and take possession thereof, and also on or at any time after the expiration of five days from such seizure to sell the said chattels, fixtures, plant, and things, or any of them, either by public auction or private contract, and for the purpose of sale to detach or remove any fixtures from that part of the premises to which they shall be attached, and with liberty to buy in, &c. (*rest of the Precedent to be the same as Precedent No.* 1).

Mortgagor covenants not to remove fixtures, &c.

Power to seize in case of default or for any other statutory cause of seizure, and to sell.

IN WITNESS, &c.

THE SCHEDULE ABOVE REFERRED TO.

No. III.

BILL *of* SALE, *by way of* MORTGAGE *of the* MACHINERY *and* PLANT *belonging to a* COLLIERY, *including* AFTER-ACQUIRED PLANT *to secure* PRESENT *and* FUTURE ADVANCES (*a*).

OF MACHINERY, ETC., TO SECURE PRESENT AND FUTURE ADVANCES.

THIS INDENTURE, made the —— day of ——, BETWEEN A. B., of, &c., C. D., of, &c., and E. F., of, &c. (hereinafter called "the mortgagors") (*mortgagors*), of the one part, and G. H., of, &c., I. K., of, &c., and L. M., of, &c. (hereinafter called "the mortgagees") (*mortgagees*), of the other part: WHEREAS the mortgagors are the lessees of a colliery, mines, and works situate at, &c., under a lease dated, &c., and made, &c., for a term of forty years, computed from the —— day of ——, and there are now standing in or upon, or used in or belonging to the said colliery, mines, and works, the fixtures, plant, machinery, chattels, and effects, specifically described in the schedule hereunto annexed, some whereof are in the nature of trade fixtures removable by the mortgagors, and the residue whereof are the absolute property of the mortgagors: AND WHEREAS the mortgagees have agreed to lend to the mortgagors the sum of £——, upon having the repayment thereof and also of any further advances which may be made by them as hereinafter mentioned, with interest for the same respectively, secured to them in the manner hereinafter expressed: NOW THIS INDENTURE WITNESSETH, that in consideration of the sum of £—— now paid to the mortgagors by the mortgagees, out of moneys belonging to them on a joint account (the receipt whereof the mortgagors hereby acknowledge), and also in consideration of such further advances (if any) as are hereinafter mentioned, the mortgagors, as beneficial owners, hereby assign unto the mortgagees, ALL the fixtures, plant, trade machinery, chattels and things, now attached to or standing and being in or upon or belonging to or used in connection with the said colliery, mines, and works hereinbefore

Parties.

Recite that mortgagors are lessees of a colliery, and that there are thereon certain machinery, plant, &c.

Agreement for loan.

Witnessing part.

Consideration.

See page 726.

Mortgagors assign machinery, plant, &c., now being on colliery, &c.;

(*a*) As this deed does not include the leasehold interest in the colliery, it will require registration as a bill of sale as regards the fixtures as well as the movable plant.

OF MACHINERY, ETC., TO SECURE PRESENT AND FUTURE ADVANCES.

mentioned or referred to, which are specifically described in the schedule hereunto annexed: AND also all the fixtures, plant, and trade machinery which may at any time hereafter during the continuance of this security be erected on or attached to, or brought upon the said colliery, mines, and works in substitution for any of the like fixtures, plant, and trade machinery specifically described in the said schedule: [AND ALSO all chattels and things (not being fixtures, plant, or trade machinery) which at any time hereafter during the continuance of this security shall be used in or brought upon the said colliery, mines, and works in substitution for or in addition to any chattels or things specifically described in the said schedule (*a*)]: TO HOLD the same unto the mortgagees, by way of security for the payment of the sum of £—— and for the repayment of such further advances as are hereinafter mentioned, with interest thereon respectively according to the covenants hereinafter contained: AND the mortgagors hereby jointly and severally covenant with the mortgagees to pay to them on the —— day of —— next the sum of £——, with interest thereon after the rate of £—— per cent. per annum, computed from the date of these presents: AND ALSO so long after that day as the said principal sum, or any part thereof, remains owing, to pay to them interest thereon by equal half-yearly [*or* quarterly, *or* monthly, *as may be agreed*] payments, on the —— day of ——, and the —— day of ——: AND also to repay to the mortgagees such further sum or sums of money (if any) as they may hereafter advance to the mortgagors, with interest thereon after the rate aforesaid, computed from the time of such advance, every such principal sum to be repayable at the expiration of one calendar month from the advance thereof, and the interest thereon to be payable by equal half-yearly [*or* quarterly, *or* monthly] payments on the days aforesaid, so long as any principal money shall remain unpaid: AND the mortgagors hereby jointly and severally further covenant with the mortgagees that they the mortgagors will not at any time during the continuance of this security remove or take away any fixtures, plant, or trade machinery, from the said colliery and premises without substituting for the same other fixtures,

and also all machinery, plant, &c., to be subsequently brought on to colliery, &c., to mortgagees.

Joint and several covenants by mortgagors for payment of principal sum and future advances with interest.

not to remove fixtures, &c., without substituting others;

not to remove chattels

(*a*) The bill of sale is void, except as against the grantor and those claiming under him by representation or assignment, in respect of the things described within brackets.

plant, or trade machinery of at least equal value, and will not remove any chattels or things hereby assigned not being in the nature of fixtures, plant, or trade machinery, from the said colliery and premises, except in the ordinary course of the colliery trade or business, without the consent of the mortgagees: And also that the mortgagors will at all times during the continuance of this security permit the mortgagees, by themselves, their agents and servants, to enter into and upon the said colliery and premises for the purpose of inspecting the things hereby assigned, and the state and condition thereof: And also that they the mortgagors will at all times during the continuance of this security keep the fixtures, plant, and machinery included herein insured against loss or damage by fire, in the sum of £—— at least, in the —— Insurance Office, or in some other Insurance Office to be approved of by the mortgagees, and will produce to the mortgagees on demand the policy of such insurance, and the receipt for every premium payable in respect thereof: And also will at all times during the continuance of this security pay the rents reserved by the lease of the said colliery and premises, and also pay all rates and taxes payable in respect thereof, and will produce to the mortgagees on demand the last receipts for such rents, rates and taxes: And it is hereby declared that if default shall be made in payment of the principal moneys and interest hereby secured, or any part thereof, at the time hereby appointed for payment thereof, or if any other default or event mentioned as a cause of seizure in section 7 of the Bills of Sale Act (1878) Amendment Act, 1882, shall be made or happen, then and in any such case, but not otherwise, it shall be lawful for the mortgagees at any time thereafter, by themselves or their agents or servants, to enter into and upon the said colliery, mines, and works, or any land used in connection therewith, and to seize and take possession of the things hereby assigned, or any of them, and on or at any time after the expiration of five days from such seizure to sell the things hereby assigned, or any of them, and for that purpose to detach and remove any fixtures from the freehold to which they shall be attached, such sale to be either by public auction or private contract, with liberty, &c. (*rest of power of sale and declaration of trust of purchase money as in Precedent No. I.*,

OF MACHINERY ETC., TO SECURE PRESENT AND FUTURE ADVANCES.

except in ordinary course of trade, without consent

to permit mortgagees to inspect;

to insure;

to pay rents rates, and taxes;

Power to take possession in case of default,

and to sell

OF MACHINERY, ETC., TO SECURE PRESENT AND FUTURE ADVANCES.

suprà, p. 722, *substituting* "mortgagees" *for* "mortgagors"): AND IT IS HEREBY LASTLY DECLARED that all powers and remedies hereby conferred on the mortgagees shall devolve on their executors, administrators, and assigns.

Powers of mortgagee to devolve on executors.

IN WITNESS, &c.

THE SCHEDULE ABOVE REFERRED TO.

No. IV.

FREEHOLD FACTORY AND TRADE MACHINERY.

MORTGAGE *of a* FREEHOLD WORKSHOP *or* FACTORY, *and the* TRADE MACHINERY *and* PLANT *about the same* (*a*).

Parties.

THIS INDENTURE, made the —— day of ——, BETWEEN A. B., of, &c., and C. D., of, &c. (hereinafter called "the mortgagors") of the one part, and E. F., of, &c. (hereinafter called "the mortgagee") of the other part: WITNESSETH, that in consideration, &c. (*the receipt, &c.*), the mortgagors, as beneficial owners, hereby convey unto the mortgagee, ALL that messuage or tenement, and the factory and buildings connected therewith, situate at, &c., known as "the —— Factory," at which the mortgagors carry on the trade or business of ——, which premises were conveyed unto and to the use of the mortgagors, in fee simple, by an indenture dated, &c., and made, &c.: TO HOLD the same unto and to the use of the mortgagee in fee simple: PROVIDED ALWAYS, that if the sum of £——, with interest thereon, shall be paid on the —— day of —— next, according to the covenant in that behalf hereinafter contained, the said premises shall at the request and cost of the mortgagors be reconveyed to them in fee simple or as they shall direct: AND THIS INDENTURE ALSO WITNESSETH, that for the consideration aforesaid the

Mortgagors convey and assign factory and buildings, and trade machinery, &c., unto mortgagee.

Proviso for redemption.

(*a*) This mortgage will require registration as a bill of sale as regards such of the fixtures as are trade machinery within section 5 of the Bills of Sale Act, 1878, and as regards all plant not being fixtures.

FREEHOLD FACTORY AND TRADE MACHINERY.

mortgagors hereby assign unto the mortgagee, ALL AND SINGULAR the plant, trade machinery, chattels, and things now being in or upon or belonging to the said premises specifically described in the schedule hereunto annexed (except such, if any, of the things mentioned in the said schedule as being in the nature of fixtures are included in the conveyance of the said freehold messuage and hereditaments hereinbefore contained): AND ALSO (by way of assignment and not of exception) all such plant and trade machinery as may at any time hereafter during the continuance of this security be used in or attached to or brought upon the said premises in substitution for any of the like plant or trade machinery specifically described in the said schedule, and shall not be in the nature of fixtures so as to be included in the conveyance hereinbefore contained: To HOLD the same unto the mortgagee by way of security for the payment of the sum of £——, with interest thereon according to the covenant hereinafter contained (*Covenant by A. B. and C. D. to pay principal and interest*, pp. 720, 726): AND IT IS HEREBY DECLARED that if default shall be made in payment of the said sum of £—— or the interest thereof, or any part thereof, on the —— day of —— next, or if any other default or event mentioned as a cause of seizure in section 7 of the Bills of Sale Act (1878) Amendment Act, 1882, shall be made or happen, then and in any such case, but not otherwise, it shall be lawful for the mortgagee, at any time or times thereafter, by himself or his agents or servants, to enter into and upon the hereditaments hereby conveyed, and to seize and take possession of the things hereby assigned, or any of them, and to sell the said hereditaments and things, or any of them, or any part thereof, either together or in lots, and either by public auction or private contract, but so that as regards the things hereby assigned no sale or removal shall be made until the expiration of five days after the seizure thereof, and as to any fixed or moveable machinery, either together with the buildings and land to which they are attached or separately therefrom, with liberty to make any arrangements as to the removal of any fixtures or articles sold separately from the land or buildings, and with liberty also to make such stipulations as to title or otherwise, and to buy in at sales by auction, and to rescind contracts, and to resell without being answerable for any loss arising thereby, and to execute assurances, give effectual receipts for the purchase-money, and do all other acts and

Mortgagors assign plant, &c. specifically described and plant, &c., to be substituted to mortgagee to secure payment of money.

Power to take possession in case of default and to sell.

FREEHOLD FACTORY AND TRADE MACHINERY.

Declaration of trust of purchase-money.

things for carrying into effect any such sale as the mortgagee shall think fit: AND IT IS HEREBY DECLARED that the mortgagee shall, with and out of the moneys to arise from any such sale as aforesaid, in the first place pay the costs and expenses attending such sale or otherwise incurred in relation to this security, and in the next place retain and pay the moneys then owing on this security, and shall pay the surplus (if any) to the mortgagors: AND THE mortgagors hereby jointly and severally further covenant with the mortgagee that the mortgagors, their heirs, executors, administrators, and assigns, will at all times during the continuance of this security, keep the buildings, plant, and machinery comprised herein insured against loss or damage by fire, in some insurance office or offices approved of by the mortgagee in the sum of £—— at the least; the same sum to be apportioned between the said buildings and the said plant and machinery in such manner as the mortgagee shall approve: AND will produce to the mortgagee, on demand, the policy of such insurance, and the receipt for every premium payable in respect thereof: AND ALSO will, at all times during the continuance of this security, keep all the said buildings, plant, and machinery, in good and substantial repair and working order, and from time to time replace and reinstate the same, so that the value thereof shall not be diminished: AND ALSO that they, the mortgagors, will not remove any of the things hereby assigned from the premises except in the ordinary course of their trade or business without the consent of the mortgagee, and will permit, &c. (*Mortgagee to inspect, suprà*, p. 727): AND IT IS HEREBY LASTLY DECLARED, that all powers and rights hereby conferred on the mortgagee shall devolve on his executors, administrators, and assigns.

Joint and several covenant by mortgagors to insure against fire, to keep buildings, &c., in repair;

and to keep property in repair;

and not to remove chattels.

IN WITNESS, &c.

THE SCHEDULE ABOVE REFERRED TO.

No. V.

MORTGAGE *of* LEASEHOLD PREMISES, *with* MACHINERY *and* PLANT (*a*).

LEASEHOLD PREMISES AND PLANT.

THIS INDENTURE, made the —— day of ——, BETWEEN A. B., of, &c., and C. D., of, &c. (hereinafter called "the mortgagors") (*mortgagors*), of the one part, and E. F., of, &c. (hereinafter called "the mortgagee") (*mortgagee*), of the other part: (*Recite lease setting out the parcels as in the lease,—agreement for loan*): NOW THIS INDENTURE WITNESSETH, that in consideration, &c. (*the receipt, &c.*), THE mortgagors, as beneficial owners, hereby demise unto the mortgagee, ALL the messuages or tenements, buildings, and premises comprised in the hereinbefore recited indenture of lease, TO HOLD the same unto the mortgagee for all the residue now unexpired of the said term of —— years created by the said indenture of lease (except the last day thereof): PROVIDED ALWAYS that the foregoing demise shall be void if the sum of £—— with interest thereon shall be paid on the —— day of —— next, according to the covenant in that behalf hereinafter contained: AND THIS INDENTURE ALSO WITNESSETH that for the consideration aforesaid, the mortgagors, as beneficial owners, hereby assign unto the mortgagees, ALL the plant, trade machinery, chattels and things in or about or belonging to the said leasehold premises which are specifically described in the schedule hereunto annexed: AND ALSO all the plant and trade machinery which at any time during the continuance of this security shall be used in, attached to, or brought upon the said leasehold premises, or any part thereof, in substitution for any of the like plant or trade machinery specifically described in the said schedule: [And also all chattels and things (other than plant and trade machinery) which at any time during the continuance of this security shall be used in or brought upon the

Parties.

Witnessing part.

Mortgagors demise leasehold messuages, &c., to mortgagee for residue of term, except last day.

Proviso for redemption.

Mortgagors assign plant, trade machinery, &c. and plant, and trade machinery, &c., to be substituted

(*a*) This deed will require registration as regards such fixtures as are trade machinery within section 5 of the Bills of Sale Act, 1878, and as regards all plant not being fixtures.

LEASEHOLD PREMISES AND PLANT.

said leasehold premises in substitution for or in addition to any chattels or things specifically described in the said schedule (*a*)]: To HOLD the same unto the mortgagee by way of security for the payment of the sum of £——, with interest thereon, according to the covenant in that behalf hereinafter contained (*Covenant by mortgagors to pay principal and interest, to insure against fire, and not to remove things*) (*power to take possession and sell and trusts of purchase money as in last Precedent, substituting "demised" for "conveyed" and omitting "heirs," suprà*, pp. 729, 730): AND IT IS HEREBY DECLARED that after a sale made under the foregoing power the mortgagors shall stand possessed of the last day of the term granted by the said indenture of lease in trust for the purchaser, and to be assigned and disposed of as he may direct (*devolution of mortgagee's rights, suprà*, p. 730).

to mortgagee to secure payment of money.

In case of sale last day of term to be held for purchaser.

IN WITNESS, &c.

THE SCHEDULE ABOVE REFERRED TO.

No. VI.

GROWING CROPS AND FARMING STOCK.

BILL *of* SALE *by way of* MORTGAGE *of present and future* GROWING CROPS *and* FARMING STOCK, *without any* INTEREST *in the* LAND (*b*).

Parties. THIS INDENTURE, made the —— day of ——, BETWEEN A. B., of, &c. (hereinafter called "the mortgagor"), of the one part, and C. D., of, &c. (hereinafter called "the mortgagee"), of the other part, WITNESSETH, that in consideration, &c. (*the receipt, &c.*), THE mortgagor, as beneficial owner, hereby assigns unto the mortgagee, ALL the crops of grass, wheat, and barley, and other crops now growing in or upon the farm and lands called ——, situate, &c., now in the occupation of the mortgagor under an indenture of lease dated the —— day of ——, and

Witnessing part.

Mortgagor assigns present and future crops,

(*a*) See note (*c*), *supra*, p. 721.
(*b*) This deed will require registration.

made between —— of the one part, and the mortgagor of the other part: AND ALSO all chattels and things upon or belonging to the said farm and lands which are specifically described in the schedule hereunto annexed: [AND ALSO all chattels and things which at any time during the continuance of this security shall be used in or brought upon the said farm and lands in substitution for or in addition to any chattels or things specifically described in the said schedule (*a*):] TO HOLD the same unto the mortgagor by way of security for the payment of the sum of £—— with interest thereon according to the covenant hereinafter contained: AND, &c. (*Covenant by mortgagor to pay principal and interest, suprà*, p. 718): AND IT IS HEREBY DECLARED that if default shall be made in payment of the said sum of £——, or the interest thereof, or any part thereof, on the —— day of —— next, or if any other default or event mentioned as a cause of seizure in section 7 of the Bills of Sale Act (1878) Amendment Act, 1882, shall be made or happen, then and in any such case, but not otherwise, it shall be lawful for the mortgagee, at any time thereafter, by himself, his agents and servants, and either with or without horses, carts, and carriages, to enter into and upon the said farm, and to seize and take possession of the said chattels hereby assigned, and to mow, reap, and gather the said crops, and carry away the same: AND also to sell the said crops, chattels, and things either by public auction or private contract, but so that the same shall not be removed or sold until the expiration of five days after the seizure thereof, with liberty, &c. (*Power of sale and declaration of trust of purchase money, and clause as to devolution of mortgagee's powers, suprà*, p. 722).

GROWING CROPS AND FARMING STOCK.

and chattels in schedule and after-acquired chattels, to mortgagee.

Power to mortgagee to take possession, mow, reap, carry away, and sell, in case of default.

IN WITNESS, &c.

THE SCHEDULE ABOVE REFERRED TO.

(*a*) This bill of sale is void, except as against the grantor and those claiming under him by representation or assignment, as regards the things described within brackets. See pp. 718, 719 *suprà*.

No. VII.

BY INN-KEEPER, OF GOODWILL AND STOCK IN TRADE.

BILL *of* SALE *by way of* MORTGAGE *by an* INN-KEEPER *of the* GOODWILL *of his* BUSINESS, *and of his* STOCK IN TRADE AND EFFECTS *by way of* COLLATERAL SECURITY *for principal money and interest secured by a* MORTGAGE *of the* LEASEHOLD PREMISES *where the business is carried on*—POWERS *to* SELL *and* LEASE.

Parties. THIS INDENTURE, made the —— day of ——, BETWEEN A. B., of, &c. (*mortgagor*) (hereinafter called "the mortgagor"), of the one part, and C. D., of, &c. (*mortgagee*) (hereinafter called "the mortgagee"), of the other part, WHEREAS the mortgagor has for some time carried on the business of an inn or tavern keeper at or in certain leasehold premises situate in —— street in the town of ——, called "The Ship Inn:" AND WHEREAS the mortgagor has requested the mortgagee to lend to him the sum of £——, which the mortgagee has agreed to do upon having the repayment thereof with interest secured by a mortgage of the said leasehold premises, and also by a mortgage of the goodwill of the said premises, and of the stock in trade and effects thereof, in the manner hereinafter expressed: AND WHEREAS the mortgagee has accordingly paid to the mortgagor the sum of £——, and in consideration thereof and in part pursuance of the said agreement, the mortgagor has by an indenture bearing even date with these presents (and duly impressed with an *ad valorem* stamp duty upon a mortgage for £——), assigned the said leasehold premises unto the mortgagee, by way of mortgage to secure the payment of the said sum of £——, with interest for the same after the rate of £—— per cent. per annum: NOW THIS INDENTURE WITNESSETH, that in consideration of the sum of £—— paid by the mortgagee to the mortgagor as aforesaid, THE mortgagor, as beneficial owner, hereby assigns unto the mortgagee, ALL THAT the goodwill and interest of him the mortgagor in the business of an inn or tavern keeper as the same is carried on at or in the said premises in —— street in the town of ——, called "The Ship Inn," and in any subsidiary trade or trades, business or businesses carried on at or in the said premises in connection

That mortgagor has carried on business at leasehold premises.

Agreement for loan.

Advance and mortgage of hereditaments by deed of even date.

Witnessing part.

Mortgagor assigns goodwill of business,

with the said business of an inn or tavern keeper, and the wine and spirit licences belonging to the said premises, and the full benefit and advantage thereof: AND ALSO all the trade fixtures, plant, and things now belonging to or used in or about the said premises called "The Ship Inn," specifically described in the schedule hereunto annexed: AND ALSO all fixtures and plant which at any time during the continuance of this security shall be used in, attached to, or brought upon the premises called "The Ship Inn," in substitution for any of the like fixtures or plant specifically described in the said schedule: [AND ALSO all chattels and things (not being fixtures or plant) which at any time during the continuance of this security shall be used in or brought into "The Ship Inn," in substitution for or in addition to any chattels or things specifically described in the said schedule (*a*):] TO HOLD the same unto the mortgagee, by way of security for the payment to the mortgagee, on the —— day of —— next, of the sum of £——, with interest thereon after the rate of £—— per cent. per annum, computed from the date of these presents (*b*): AND SO THAT if the principal sum shall not be paid on that day, interest after the rate aforesaid shall continue to be paid thereon while unpaid by equal half-yearly [*or* quarterly *or* monthly] payments on the —— day of —— and the —— day of ——: AND the mortgagor hereby covenants with the mortgagee that he will not during the continuance of this security remove the things hereby assigned, or any of them, from or out of the said premises called "The Ship Inn," except for the purpose of substituting other things in their place of equal or greater value, and except as to consumable provisions in the ordinary course of business, without the consent of the mortgagee: AND THAT the mortgagee shall be at liberty at all reasonable times to enter into and upon the said

BY INNKEEPER, OF GOODWILL AND STOCK IN TRADE.

and fixtures and chattels, described in schedule, and to be substituted,

to mortgagee.

Proviso that mortgagor shall not remove chattels except to substitute others, without consent,

and that mortgagee may enter, inspect, &c.

(*a*) This bill of sale is void, except as against the grantor and those claiming under him by representation or assignment, in respect of the things described within the brackets.

In a case in which a grantor by the bill of sale assigned the stock then in the premises or which should thereafter be brought thereon, it was held that the grantor had an implied licence until the grantee should take possession to carry on his business in the ordinary course of business. National Mercantile Bank *v.* Hampson, 5 Q. B. D. 177. See also Taylor *v.* McKeand, 5 C. P. D. 358; Walker *v.* Clay, W. N. 1880, p. 53.

(*b*) It is assumed that the recited mortgage deed contains the usual covenants to pay principal and interest.

BY INNKEEPER, OF GOODWILL AND STOCK IN TRADE.

premises called "The Ship Inn," for the purpose of inspecting the things hereby assigned, and the state and condition thereof (*Covenant to insure, suprà*, p. 721): AND IT IS HEREBY DECLARED, that if default shall be made in payment of the said sum of £——, or the interest thereof, or any part thereof, on the said —— day of —— next, or if any other default or event mentioned as a cause of seizure in section 7 of the Bills of Sale Act (1878) Amendment Act, 1882, shall be made or happen, then and in any such case, but not otherwise, it shall be lawful for the mortgagee, at any time or times thereafter, either by himself or his agents or servants, to enter into and upon the said premises called "The Ship Inn," or any part thereof, or any other place or places in which the fixtures, plant, chattels, and things hereby assigned, or any of them, shall be or shall be supposed to be, and to seize and take possession of the said fixtures, plant, chattels, and things: AND also to sell the said goodwill, fixtures, plant, chattels and things hereby assigned, or any of them, or any part or parts thereof respectively, either together or in lots, and either by public auction or private contract, and either upon the said premises called "The Ship Inn" or elsewhere, but so that no sale or removal shall be made of any of the things hereby assigned until the expiration of five days after the seizure thereof, with liberty for the mortgagee to detach any fixtures from the said premises for the purpose of the sale: AND ALSO at any time or times after the expiration of five days after such seizure as aforesaid, and either preparatory to a sale or otherwise, to let the fixtures, plant, chattels, and things hereby assigned, or any of them, with the said premises called "The Ship Inn," either from year to year or for any term or terms of years, and either with or without taking a premium for the making thereof respectively, and at such yearly or other rent or rents, and under and subject to such covenants and conditions, and generally upon such terms as he shall think fit: AND ALSO to buy in any premises which may be put up for sale by auction, and to rescind or vary any contract for the sale, letting, or leasing of the said premises, or any part thereof, and to re-sell, re-let, and re-demise the premises which shall be so bought in, or the contract for the sale, letting, or leasing whereof may be so rescinded as aforesaid, without being answerable for any loss occasioned thereby or consequent

Power to mortgagee in case of default, to enter and take possession,

and to sell,

with power to buy in and rescind contracts,

thereon, and also upon any such sale, letting, or leasing as aforesaid, to give time for the payment of the purchase money or premiums, or any part or parts thereof respectively, and upon such security, personal or otherwise, or without security, as he may think fit, and also to execute any deed or deeds, to give effectual receipts for any purchase money, premiums, or other moneys, and to do all other acts and things for completing any sale, letting, or lease which the mortgagee shall think proper: AND IT IS HEREBY DECLARED, that the mortgagee shall, with and out of the purchase moneys, rent, premiums, or other consideration moneys to arise from any such sale, letting, or lease, as aforesaid, in the first place pay and retain the costs and expenses attending such sale, letting, or lease, or otherwise incurred in relation to this security, and in the next place pay and satisfy the moneys which shall then be owing on the security of these presents, and shall pay the surplus (if any) to the mortgagor. (*Clause as to devolution of mortgagee's powers, suprà*, p. 730.)

BY INNKEEPER, OF GOODWILL AND STOCK IN TRADE.

and to give time for payment of purchase money, &c.

Trusts of purchase money, rent, &c.

IN WITNESS, &c.

THE SCHEDULE ABOVE REFERRED TO.

No. VIII.

BILL OF SALE *of* CHATTELS *by a* TRADER *to a* BANKING COMPANY *to secure the* BALANCE *of his* ACCOUNT CURRENT.

TO BANKING COMPANY TO SECURE BALANCE OF ACCOUNT CURRENT.

THIS INDENTURE, made the —— day of ——, BETWEEN A. B. of, &c. (hereinafter called "the mortgagor") (*mortgagor*), of the one part, and The —— Banking Company, Limited, (hereinafter called "the company"), of the other part: WHEREAS the mortgagor has opened an account with the company at their branch bank in ——, and has agreed to give such security in respect thereof as is hereinafter expressed: NOW THIS INDENTURE WITNESSETH, that in consideration of the premises, the mortgagor hereby covenants with the company that he the mortgagor will on demand, or if

Parties.

Recite that mortgagor has opened account.

Agreement for security.

Witnessing part.

Mortgagor covenants

TO BANKING COMPANY TO SECURE BALANCE OF ACCOUNT CURRENT.

no demand shall be made in his lifetime then his heirs, executors, or administrators, will within one calendar month after his death without any such demand pay to the company the sum of money for the time being owing from him on his account current with the company (including interest, with half-yearly rests, commission, and other customary charges): AND if at the time when this account current is closed a balance shall be owing from him thereon, then will pay to the company interest thereon while the same shall remain unpaid after the rate of £5 per cent. per annum, computed from the time when such balance shall be ascertained: AND THIS INDENTURE ALSO WITNESSETH, that in consideration of the premises, THE mortgagor, as beneficial owner, hereby assigns unto the company, ALL the chattels and things specifically described in the schedule hereto annexed: TO HOLD the same unto the company by way of security for the payment to to the company of all moneys hereinbefore covenanted to be paid to them (*Covenant by mortgagor not to remove chattels, to insure, and produce receipts, suprà*, pp. 720, 721): AND IT IS HEREBY DECLARED, that if default shall be made in payment of the money hereby secured at the time hereby provided for payment thereof, or if any other default or event mentioned as a cause of seizure in section 7 of the Bills of Sale Act (1878) Amendment Act, 1882, shall be made or happen, then and in any such case, but not otherwise, it shall be lawful for the company, at any time or times thereafter to, &c. (*take possession and sell,—declaration of trusts of purchase money,—as in Precedent No. I., suprà*, pp. 721, 722).

to pay to company all moneys owing on account current,

and to pay interest on final balance.

Second witnessing part.

Mortgagor assigns chattels to banking company.

Subject to proviso for redemption.

Power to take possession and sell in case of default.

IN WITNESS, &c.

THE SCHEDULE ABOVE REFERRED TO.

No. IX.

AFFIDAVIT *to be* FILED PURSUANT *to* BILLS *of* SALE ACT *of* 1882.

AFFIDAVIT PURSUANT TO ACT OF 1882.

In the High Court of Justice.

—— Division. 18— No.

I, L. M., of ——, in the county of ——, make oath and say, as follows:—

1. The paper writing hereunto annexed and marked A is a true copy of a bill of sale, and of the schedule or inventory thereto annexed or therein referred to, and of the [*or* every, *if there are two attesting witnesses*], attestation of the execution thereof, as made and given and executed by A. B.

2. The said bill of sale was made and given by the said A. B. on the —— day of ——, 18—.

3. I was present, and saw the said A. B. duly execute the said bill of sale on the said —— day of ——, 18—.

4. The said A. B. resides at, &c. (*state residence at time of swearing affidavit*), and is, &c. (*state occupation*).

5. The name L. M. subscribed to the said bill of sale as that of the witness attesting the due execution thereof is in my proper handwriting (*a*).

6. I reside at ——, in the county of ——, and am (*occupation*).

SWORN, &c.

(*a*) *If there are two attesting witnesses, substitute for paragraph* 5 :—

6. The names L. M. and G. H. subscribed as witnesses attesting the execution of the said bill of sale are respectively in the handwriting of me and of the said G. H. I reside at ——, and am ——, and the said G. H. resides at ——, and is a grocer.

No. X.

MEMORANDUM OF SATISFACTION OF BILL OF SALE.

MEMORANDUM *of* SATISFACTION INDORSED *on a* BILL OF SALE.

MEMORANDUM that all the money received by the within-written deed has been satisfied.

(Signed) C. D.

WITNESS, &c.

No. XI.

CONSENT TO ORDER OF SATISFACTION.

CONSENT *by* GRANTEE *of* BILL *of* SALE *to an* ORDER *to enter* SATISFACTION.

In the High Court of Justice.
Queen's Bench Division.

I, C. D., of, &c., DO HEREBY consent to an order that a memorandum of satisfaction be written upon the copy of the bill of sale given to secure the sum of £—— and interest bearing date the —— day of ——, 18—, made between A. B. of the one part and me of the other part, and filed on the —— day of ——, 18—, the debt for which the said bill of sale was given as a security having been satisfied. Dated the —— day of ——, 18—.

(Signed) C. D.

APPENDIX.

VENDOR AND PURCHASER ACT, 1874.

37 & 38 Vict. c. 78.

An Act to Amend the Law of Vendor and Purchaser, and further to simplify Title to Land. [7th August, 1874.]

37 & 38 Vict. c. 78.

Whereas it is expedient to facilitate the transfer of land by means of certain amendments in the law of vendor and purchaser:

Be it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

Forty years substituted for sixty years as the root of title.

1. In the completion of any contract of sale of land made after the thirty-first day of December, one thousand eight hundred and seventy-four, and subject to any stipulation to the contrary in the contract, forty years shall be substituted as the period of commencement of title which a purchaser may require in place of sixty years, the present period of such commencement; nevertheless earlier title than forty years may be required in cases similar to those in which earlier title than sixty years may now be required.

Rules for regulating obligations and rights of vendor and purchaser.

2. In the completion of any such contract as aforesaid, and subject to any stipulation to the contrary in the contract, the obligations and rights of vendor and purchaser shall be regulated by the following rules; that is to say,

First. Under a contract to grant or assign a term of years, whether derived or to be derived out of a freehold or leasehold estate, the intended lessee or assign shall not be entitled to call for the title to the freehold.

Second. Recitals, statements, and descriptions of facts, matters, and parties contained in deeds, instruments, Acts of

37 & 38 Vict. c. 78.

Parliament, or statutory declarations, twenty years old at the date of the contract, shall, unless and except so far as they shall be proved to be inaccurate, be taken to be sufficient evidence of the truth of such facts, matters, and descriptions.

Third. The inability of the vendor to furnish the purchaser with a legal covenant to produce and furnish copies of documents of title shall not be an objection to title in case the purchaser will, on the completion of the contract, have an equitable right to the production of such documents.

Fourth. Such covenants for production as the purchaser can and shall require shall be furnished at his expense, and the vendor shall bear the expense of perusal and execution on behalf of and by himself, and on behalf of and by necessary parties other than the purchaser.

Fifth. Where the vendor retains any part of an estate to which any documents of title relate he shall be entitled to retain such documents.

Trustees may sell, &c., notwithstanding rules.

3. Trustees who are either vendors or purchasers may sell or buy without excluding the application of the second section of this Act.

Legal personal representative authorised to convey legal estate of mortgaged property.

[4. The legal personal representative of a mortgagee of a freehold estate or of a copyhold estate to which the mortgagee shall have been admitted may on payment of all sums secured by the mortgage convey or surrender the mortgaged estate whether the mortgage be in form an assurance subject to redemption or an assurance upon trust (*a*).]

Bare legal estate.

[5. Upon the death of a bare trustee of any corporeal or incorporeal hereditament of which such trustee was seised in fee simple such hereditament shall vest like a chattel real in the legal or personal representative from time to time of such trustee (*b*).]

(*a*) This section was repealed by the Conveyancing Act, 1881, sec. 30 (sub-sec. 2), as to cases of death occurring after 31 Dec., 1881.

(*b*) This section was repealed as to cases occurring after 31 Dec., 1875, by the Land Transfer Act, 1875, sec. 48, which instead thereof enacted as to any corporeal or incorporeal hereditament of which such trustee was seised in fee simple, that such hereditament should vest like a chattel real in the legal personal representative from time to time of such trustee; and by the Conveyancing Act, 1881, sec. 30 (sub-sec. 2) the above 48th section of the Land Transfer Act, 1875, is repealed as to cases of death occurring after 31 Dec., 1881.

37 & 38 Vict. c. 78.

Married woman, being bare trustee may convey.

6. When any freehold or copyhold hereditament shall be vested in a married woman as a bare trustee, she may convey or surrender the same as if she were a feme sole.

7. (*Repealed.*) (*c*).

Non-registration of will in Middlesex or Yorkshire, &c., cured in certain cases.

8. Where the will of a testator devising land in Middlesex or Yorkshire has not been registered within the period allowed by law in that behalf, an assurance of such land to a purchaser or mortgagee by the devisee or by some one deriving title under him shall, if registered before, take precedence of and prevail over any assurance from the testator's heir-at-law.

Vendor or purchaser may obtain decision of judge in chambers as to requisitions or objections, or compensation, &c.

9. A vendor or purchaser of real or leasehold estate in England, or their representatives respectively, may at any time or times and from time to time apply in a summary way to a judge of the Court of Chancery in England in chambers, in respect of any requisitions or objections, or any claim for compensation, or any other question arising out of or connected with the contract, (not being a question affecting the existence or validity of the contract,) and the judge shall make such order upon the application as to him shall appear just, and shall order how and by whom all or any of the costs of and incident to the application shall be borne and paid.

A vendor or purchaser of real or leasehold estate in Ireland, or their representatives respectively, may in like manner and for the same purpose apply to a judge of the Court of Chancery in Ireland, and the judge shall make such order upon the application as to him shall appear just, and shall order how and by whom all or any of the costs of and incident to the application shall be borne and paid.

Extent of Act.

10. This Act shall not apply to Scotland, and may be cited as the Vendor and Purchaser Act, 1874.

(*c*) This section, which relates to priority and protection by legal estates and tacking, was repealed retrospectively by the 73rd section of the Conveyancing Act, 1881.

CONVEYANCING AND LAW OF PROPERTY ACT, 1881.

44 & 45 Vict. c. 41.

44 & 45 Vict. c. 41.

An Act for simplifying and improving the practice of Conveyancing; and for vesting in Trustees, Mortgagees, and others various powers commonly conferred by provisions inserted in Settlements, Mortgages, Wills, and other Instruments; and for amending in various particulars the Law of Property; and for other purposes.

[22nd August, 1881.]

Be it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

PRELIMINARY.

I.—Preliminary.

Short title; commencement; extent.

1.—(1.) This Act may be cited as the Conveyancing and Law of Property Act, 1881.

(2.) This Act shall commence and take effect from and immediately after the thirty-first day of December one thousand eight hundred and eighty-one.

(3.) This Act does not extend to Scotland.

Interpretation of property, land, &c.

2. In this Act—

(i.) Property, unless a contrary intention appears, includes real and personal property, and any estate or interest in any property, real or personal, and any debt, and any thing in action, and any other right or interest:

(ii.) Land, unless a contrary intention appears, includes land of any tenure, and tenements and hereditaments, corporeal or

incorporeal, and houses and other buildings, also an undivided share in land : 44 & 45 Vict. c. 41.

(iii.) In relation to land, income includes rents and profits, and possession includes receipt of income :

(iv.) Manor includes lordship, and reputed manor or lordship :

(v.) Conveyance, unless a contrary intention appears, includes assignment, appointment, lease, settlement, and other assurance, and covenant to surrender, made by deed, on a sale, mortgage, demise, or settlement of any property, or on any other dealing with or for any property ; and convey, unless a contrary intention appears, has a meaning corresponding with that of conveyance :

(vi.) Mortgage includes any charge on any property for securing money or money's worth ; and mortgage money means money, or money's worth, secured by a mortgage ; and mortgagor includes any person from time to time deriving title under the original mortgagor, or entitled to redeem a mortgage, according to his estate, interest, or right, in the mortgaged property ; and mortgagee includes any person from time to time deriving title under the original mortgagee ; and mortgagee in possession is, for the purposes of this Act, a mortgagee who, in right of the mortgage, has entered into and is in possession of the mortgaged property :

(vii.) Incumbrance includes a mortgage in fee, or for a less estate, and a trust for securing money, and a lien, and a charge of a portion, annuity, or other capital or annual sum ; and incumbrancer has a meaning corresponding with that of incumbrance, and includes every person entitled to the benefit of an incumbrance, or to require payment or discharge thereof :

(viii.) Purchaser, unless a contrary intention appears, includes a lessee or mortgagee, and an intending purchaser, lessee, or mortgagee, or other person, who, for valuable consideration, takes or deals for any property ; and purchase, unless a contrary intention appears, has a meaning corresponding with that of purchaser ; but sale means only a sale properly so called :

(ix.) Rent includes yearly or other rent, toll, duty, royalty, or other reservation, by the acre, the ton, or otherwise ; and fine includes premium or fore-gift, and any payment, consideration, or benefit in the nature of a fine, premium, or fore-gift :

(x.) Building purposes include the erecting and the im-

44 & 45 Vict. c. 41.

proving of, and the adding to, and the repairing of buildings; and a building lease is a lease for building purposes or purposes connected therewith:

(xi.) A mining lease is a lease for mining purposes, that is, the searching for, winning, working, getting, making merchantable, carrying away, or disposing of mines and minerals, or purposes connected therewith, and includes a grant or licence for mining purposes:

(xii.) Will includes codicil:

(xiii.) Instrument includes deed, will, inclosure award, and Act of Parliament:

(xiv.) Securities include stocks, funds, and shares:

(xv.) Bankruptcy includes liquidation by arrangement, and any other act or proceeding in law having, under any Act for the time being in force, effects or results similar to those of bankruptcy; and bankrupt has a meaning corresponding with that of bankruptcy:

(xvi.) Writing includes print; and words referring to any instrument, copy, extract, abstract, or other document include any such instrument, copy, extract, abstract, or other document being in writing or in print, or partly in writing and partly in print:

(xvii.) Person includes a corporation:

(xviii.) Her Majesty's High Court of Justice is referred to as the Court.

SALES AND OTHER TRANSACTIONS.

II.—Sales and other Transactions.

Contracts for Sale.

Contracts for Sale.

Application of stated conditions of sale to all purchases.

3.—(1.) Under a contract to sell and assign a term of years derived out of a leasehold interest in land, the intended assign shall not have the right to call for the title to the leasehold reversion.

(2.) Where land of copyhold or customary tenure has been converted into freehold by enfranchisement, then, under a contract to sell and convey the freehold, the purchaser shall not have the right to call for the title to make the enfranchisement.

(3.) A purchaser of any property shall not require the pro-

duction, or any abstract or copy, of any deed, will, or other document, dated or made before the time prescribed by law, or stipulated, for commencement of the title, even though the same creates a power subsequently exercised by an instrument abstracted in the abstract furnished to the purchaser; nor shall he require any information, or make any requisition, objection, or inquiry, with respect to any such deed, will, or document, or the title prior to that time, notwithstanding that any such deed, will, or other document, or that prior title, is recited, covenanted to be produced, or noticed; and he shall assume, unless the contrary appears, that the recitals, contained in the abstracted instruments, of any deed, will, or other document, forming part of that prior title, are correct, and give all the material contents of the deed, will, or other document so recited, and that every document so recited was duly executed by all necessary parties, and perfected, if and as required, by fine, recovery, acknowledgment, inrolment, or otherwise.

(4.) Where land sold is held by lease (not including under-lease), the purchaser shall assume, unless the contrary appears, that the lease was duly granted; and, on production of the receipt for the last payment due for rent under the lease before the date of actual completion of the purchase, he shall assume, unless the contrary appears, that all the covenants and provisions of the lease have been duly performed and observed up to the date of actual completion of the purchase.

(5.) Where land sold is held by under-lease, the purchaser shall assume, unless the contrary appears, that the under-lease and every superior lease were duly granted; and, on production of the receipt for the last payment due for rent under the under-lease before the date of actual completion of the purchase, he shall assume, unless the contrary appears, that all the covenants and provisions of the under-lease have been duly performed and observed up to the date of actual completion of the purchase, and further that all rent due under every superior lease, and all the covenants and provisions of every superior lease, have been paid and duly performed and observed up to that date.

(6.) On a sale of any property, the expenses of the production and inspection of all Acts of Parliament, inclosure awards, records, proceedings of courts, court rolls, deeds, wills, probates, letters of administration, and other documents, not in the ven-

44 & 45 Vict. c. 41.

Contracts for Sale.

dor's possession, and the expenses of all journeys incidental to such production or inspection, and the expenses of searching for, procuring, making, verifying, and producing all certificates, declarations, evidences, and information not in the vendor's possession, and all attested, stamped, office, or other copies or abstracts of, or extracts from, any Acts of Parliament or other documents aforesaid, not in the vendor's possession, if any such production, inspection, journey, search, procuring, making, or verifying is required by a purchaser, either for verification of the abstract, or for any other purpose, shall be borne by the purchaser who requires the same; and where the vendor retains possession of any document, the expenses of making any copy thereof, attested or unattested, which a purchaser requires to be delivered to him, shall be borne by that purchaser.

(7.) On a sale of any property in lots, a purchaser of two or more lots, held wholly or partly under the same title, shall not have a right to more than one abstract of the common title, except at his own expense.

(8.) This section applies only to titles and purchasers on sales properly so called, notwithstanding any interpretation in this Act.

(9.) This section applies only if and as far as a contrary intention is not expressed in the contract of sale, and shall have effect subject to the terms of the contract and to the provisions therein contained.

(10.) This section applies only to sales made after the commencement of this Act.

(11.) Nothing in this section shall be construed as binding a purchaser to complete his purchase in any case where, on a contract made independently of this section, and containing stipulations similar to the provisions of this section, or any of them, specific performance of the contract would not be enforced against him by the Court.

Completion of contract after death.

4.—(1.) Where at the death of any person there is subsisting a contract enforceable against his heir or devisee, for the sale of the fee simple or other freehold interest, descendible to his heirs general, in any land, his personal representatives shall, by virtue of this Act, have power to convey the land for all the estate and interest vested in him at his death, in any manner proper for giving effect to the contract.

(2.) A conveyance made under this section shall not affect the beneficial rights of any person claiming under any testamentary disposition or as heir or next of kin of a testator or intestate. 44 & 45 Vict. c. 41. *Contracts for Sale.*

(3.) This section applies only in cases of death after the commencement of this Act.

Discharge of Incumbrances on Sale.

Discharge of Incumbrances on Sale.

Provision by Court for incumbrances, and sale freed therefrom.

5.—(1.) Where land subject to any incumbrance, whether immediately payable or not, is sold by the Court, or out of Court, the Court may, if it thinks fit, on the application of any party to the sale, direct or allow payment into Court, in case of an annual sum charged on the land, or of a capital sum charged on a determinable interest in the land, of such amount as, when invested in Government securities, the Court considers will be sufficient, by means of the dividends thereof, to keep down or otherwise provide for that charge, and in any other case of capital money charged on the land, of the amount sufficient to meet the incumbrance and any interest due thereon; but in either case there shall also be paid into Court such additional amount as the Court considers will be sufficient to meet the contingency of further costs, expenses, and nterest, and any other contingency, except depreciation of investments, not exceeding one-tenth part of the original amount to be paid in, unless the Court for special reason thinks fit to require a larger additional amount.

(2.) Thereupon, the Court may, if it thinks fit, and either after or without any notice to the incumbrancer, as the Court thinks fit, declare the land to be freed from the incumbrance, and make any order for conveyance, or vesting order, proper for giving effect to the sale, and give directions for the retention and investment of the money in Court.

(3.) After notice served on the persons interested in or entitled to the money or fund in Court, the Court may direct payment or transfer thereof to the persons entitled to receive or give a discharge for the same, and generally may give directions respecting the application or distribution of the capital or income thereof.

(4.) This section applies to sales not completed at the commencement of this Act, and to sales thereafter made.

44 & 45 VICT. c. 41.

General Words.

General words in conveyances of land, buildings, or manor.

General Words.

6.—(1.) A conveyance of land shall be deemed to include and shall by virtue of this Act operate to convey, with the land, all buildings, erections, fixtures, commons, hedges, ditches, fences, ways, waters, watercourses, liberties, privileges, easements, rights, and advantages whatsoever, appertaining or reputed to appertain to the land, or any part thereof, or at the time of conveyance demised, occupied, or enjoyed with, or reputed or known as part or parcel of or appurtenant to the land or any part thereof.

(2.) A conveyance of land, having houses or other buildings thereon, shall be deemed to include and shall by virtue of this Act operate to convey, with the land, houses, or other buildings, all outhouses, erections, fixtures, cellars, areas, courts, courtyards, cisterns, sewers, gutters, drains, ways, passages, lights, watercourses, liberties, privileges, easements, rights, and advantages whatsoever, appertaining or reputed to appertain to the land, houses, or other buildings conveyed, or any of them, or any part thereof, or at the time of conveyance demised, occupied, or enjoyed with, or reputed or known as part or parcel of or appurtenant to, the land, houses, or other buildings conveyed, or any of them, or any part thereof.

(3.) A conveyance of a manor shall be deemed to include and shall by virtue of this Act operate to convey, with the manor, all pastures, feedings, wastes, warrens, commons, mines, minerals, quarries, furzes, trees, woods, underwoods, coppices, and the ground and soil thereof, fishings, fisheries, fowlings, courts leet, courts baron, and other courts, view of frankpledge, and all that to view of frankpledge doth belong, mills, mulctures, customs, tolls, duties, reliefs, heriots, fines, sums of money, amerciaments, waifs, estrays, chief-rents, quit-rents, rentscharge, rents seck, rents of assize, fee farm rents, services, royalties, jurisdictions, franchises, liberties, privileges, easements, profits, advantages, rights, emoluments, and hereditaments whatsoever, to the manor appertaining, or reputed to appertain, or at the time of conveyance demised, occupied, or enjoyed with the same, or reputed or known as part, parcel, or member thereof.

(4.) This section applies only if and as far as a contrary intention is not expressed in the conveyance, and shall have effect

subject to the terms of the conveyance and to the provisions therein contained. 44 & 45 Vict. c. 41.

General Words.

(5.) This section shall not be construed as giving to any person a better title to any property, right, or thing in this section mentioned than the title which the conveyance gives to him to the land or manor expressed to be conveyed, or as conveying to him any property, right, or thing in this section mentioned, further or otherwise than as the same could have been conveyed to him by the conveying parties.

(6.) This section applies only to conveyances made after the commencement of this Act.

Covenants for Title.

Covenants for Title.

7.—(1.) In a conveyance there shall, in the several cases in this section mentioned, be deemed to be included, and there shall in those several cases, by virtue of this Act, be implied, a covenant to the effect in this section stated, by the person or by each person who conveys, as far as regards the subject-matter or share of subject-matter expressed to be conveyed by him, with the person, if one, to whom the conveyance is made, or with the persons jointly, if more than one, to whom the conveyance is made as joint tenants, or with each of the persons, if more than one, to whom the conveyance is made as tenants in common, that is to say:

Covenants for title to be implied.

(A.) In a conveyance for valuable consideration, other than a mortgage, the following covenant by a person who conveys and is expressed to convey as beneficial owner (namely):

On conveyance for value, by beneficial owner.

That, notwithstanding anything by the person who so conveys, or any one through whom he derives title, otherwise than by purchase for value, made, done, executed, or omitted, or knowingly suffered, the person who so conveys, has, with the concurrence of every other person, if any, conveying by his direction, full power to convey the subject-matter expressed to be conveyed, subject as, if so expressed, and in the manner in which, it is expressed to be conveyed, and that, notwithstanding anything as aforesaid, that subject-matter shall remain to and be quietly entered upon, received, and held, occupied, enjoyed, and taken, by the person to whom the conveyance is expressed to be made, and any person

Right to convey.

Quiet enjoyment.

44 & 45 Vict. c. 41.

Covenants for Title.

deriving title under him, and the benefit thereof shall be received and taken accordingly, without any lawful interruption or disturbance by the person who so conveys, or any person conveying by his direction, or rightfully claiming or to claim by, through, under, or in trust for the person who so conveys, or any person conveying by his direction, or by, through, or under any one not being a person claiming in respect of an estate or interest subject whereto the conveyance is expressly made, through whom the person who so conveys derives title, otherwise than by purchase for value; and that, freed and discharged from, or otherwise by the person who so conveys sufficiently indemnified against, all such estates, incumbrances, claims, and demands other than those subject to which the conveyance is expressly made, as either before or after the date of the conveyance have been or shall be made, occasioned, or suffered by that person or by any person conveying by his direction, or by any person rightfully claiming by, through, under, or in trust for the person who so conveys, or by, through, or under any person conveying by his direction, or by, through, or under any one through whom the person who so conveys derives title, otherwise than by purchase for value; and further that the person who so conveys, and any person conveying by his direction, and every other person having or rightfully claiming any estate or interest in the subject-matter of conveyance, other than an estate or interest subject whereto the conveyance is expressly made, by, through, under, or in trust for the person who so conveys, or by, through, or under any person conveying by his direction, or by, through, or under any one through whom the person who so conveys derives title, otherwise than by purchase for value, will, from time to time and at all times after the date of the conveyance, on the request and at the cost of any person to whom the conveyance is expressed to be made, or of any person deriving title under him, execute and do all such lawful assurances and things for further or more perfectly assuring the subject-matter of the conveyance to the person to whom the conveyance is made, and to those deriving title under him, subject as, if so expressed, and in the manner in which the

Freedom from incumbrance.

Further assurance.

conveyance is expressed to be made, as by him or them or any of them shall be reasonably required: 44 & 45 Vict. c. 41.

Covenants for Title.

(in which covenant a purchase for value shall not be deemed to include a conveyance in consideration of marriage):

(B.) In a conveyance of leasehold property for valuable consideration, other than a mortgage, the following further covenant by a person who conveys and is expressed to convey as beneficial owner (namely): On conveyance of leaseholds for value, by beneficial owner.

That, notwithstanding anything by the person who so conveys, or any one through whom he derives title otherwise than by purchase for value, made, done, executed, or omitted, or knowingly suffered, the lease or grant creating the term or estate for which the land is conveyed is, at the time of conveyance, a good, valid, and effectual lease or grant of the property conveyed, and is in full force, unforfeited, unsurrendered, and in nowise become void or voidable, and that, notwithstanding anything as aforesaid, all the rents reserved by, and all the covenants, conditions, and agreements contained in, the lease or grant, and on the part of the lessee or grantee and the persons deriving title under him to be paid, observed, and performed, have been paid, observed, and performed up to the time of conveyance: Validity of lease.

(in which covenant a purchase for value shall not be deemed to include a conveyance in consideration of marriage):

(C.) In a conveyance by way of mortgage, the following covenant by a person who conveys and is expressed to convey as beneficial owner (namely): On mortgage, by beneficial owner.

That the person who so conveys, has, with the concurrence of every other person, if any, conveying by his direction, full power to convey the subject-matter expressed to be conveyed by him, subject as, if so expressed, and in the manner in which it is expressed to be conveyed; and also that, if default is made in payment of the money intended to be secured by the conveyance, or any interest thereon, or any part of that money or interest, contrary to any provision in the conveyance, it shall be lawful for the person to whom the conveyance is expressed to be made, and the persons deriving title under him, to enter into and upon, or receive, and thenceforth quietly hold, occupy, and enjoy or take and have, the subject-matter expressed to be conveyed, or any Right to convey. Quiet enjoyment.

44 & 45 Vict. c. 41.

Covenants for Title.

part thereof, without any lawful interruption or disturbance by the person who so conveys, or any person conveying by his direction, or any other person not being a person claiming in respect of an estate or interest subject whereto the conveyance is expressly made; and that, freed and discharged from, or otherwise by the person who so conveys sufficiently indemnified against, all estates, incumbrances, claims, and demands whatever, other than those subject whereto the conveyance is expressly made; and further, that the person who so conveys and every person conveying by his direction, and every person deriving title under any of them, and every other person having or rightfully claiming any estate or interest in the subject-matter of conveyance, or any part thereof, other than an estate or interest subject whereto the conveyance is expressly made, will from time to time and at all times, on the request of any person to whom the conveyance is expressed to be made, or of any person deriving title under him, but, as long as any right of redemption exists under the conveyance, at the cost of the person so conveying, or of those deriving title under him, and afterwards at the cost of the person making the request, execute and do all such lawful assurances and things for further or more perfectly assuring the subject-matter of conveyance and every part thereof to the person to whom the conveyance is made, and to those deriving title under him, subject as, if so expressed, and in the manner in which the conveyance is expressed to be made, as by him or them or any of them shall be reasonably required:

Freedom from incumbrance.

Further assurance.

On mortgage of leaseholds, by beneficial owner.

(D.) In a conveyance by way of mortgage of leasehold property, the following further covenant by a person who conveys and is expressed to convey as beneficial owner (namely):

Validity of lease.

That the lease or grant creating the term or estate for which the land is held is, at the time of conveyance, a good, valid, and effectual lease or grant of the land conveyed and is in full force, unforfeited, and unsurrendered and in nowise become void or voidable, and that all the rents reserved by, and all the covenants, conditions, and agreements contained in, the lease or grant, and on the part of the lessee or grantee and the persons deriving title under him to be paid,

observed, and performed, have been paid, observed, and performed up to the time of conveyance; and also that the person so conveying, or the persons deriving title under him, will at all times, as long as any money remains on the security of the conveyance, pay, observe, and perform, or cause to be paid, observed, and performed all the rents reserved by, and all the covenants, conditions, and agreements contained in, the lease or grant, and on the part of the lessee or grantee and the persons deriving title under him to be paid, observed, and performed, and will keep the person to whom the conveyance is made, and those deriving title under him, indemnified against all actions, proceedings, costs, charges, damages, claims and demands, if any, to be incurred or sustained by him or them by reason of the non-payment of such rent or the non-observance or non-performance of such covenants, conditions, and agreements, or any of them :

Payment of rent and performance of covenants.

(E.) In a conveyance by way of settlement, the following covenant by a person who conveys and is expressed to convey as settlor (namely) :

On settlement.

That the person so conveying, and every person deriving title under him by deed or act or operation of law in his lifetime subsequent to that conveyance, or by testamentary disposition or devolution in law, on his death, will, from time to time, and at all times, after the date of that conveyance, at the request and cost of any person deriving title thereunder, execute and do all such lawful assurances and things for further or more perfectly assuring the subject-matter of the conveyance to the persons to whom the conveyance is made and those deriving title under them, subject as, if so expressed, and in the manner in which the conveyance is expressed to be made, as by them or any of them shall be reasonably required :

For further assurance, limited.

(F.) In any conveyance, the following covenant by every person who conveys and is expressed to convey as trustee or mortgagee, or as personal representative of a deceased person, or as committee of a lunatic so found by inquisition, or under an order of the Court, which covenant shall be deemed to extend to every such person's own acts (namely) :

On conveyance by trustee or mortgagee.

That the person so conveying has not executed or done, or

Against incumbrances.

44 & 45 Vict. c. 41.

Covenants for Title.

knowingly suffered, or been party or privy to, any deed or thing, whereby or by means whereof the subject-matter of the conveyance, or any part thereof, is or may be impeached, charged, affected, or incumbered in title, estate, or otherwise, or whereby or by means whereof the person who so conveys is in anywise hindered from conveying the subject-matter of the conveyance, or any part thereof, in the manner in which it is expressed to be conveyed.

(2.) Where in a conveyance it is expressed that by direction of a person expressed to direct as beneficial owner another person conveys, then, within this section, the person giving the direction, whether he conveys and is expressed to convey as beneficial owner or not, shall be deemed to convey and to be expressed to convey as beneficial owner the subject-matter so conveyed by his direction; and a covenant on his part shall be implied accordingly.

(3.) Where a wife conveys and is expressed to convey as beneficial owner, and the husband also conveys and is expressed to convey as beneficial owner, then, within this section, the wife shall be deemed to convey and to be expressed to convey by direction of the husband, as beneficial owner; and, in addition to the covenant implied on the part of the wife, there shall also be implied, first, a covenant on the part of the husband as the person giving that direction, and secondly, a covenant on the part of the husband in the same terms as the covenant implied on the part of the wife.

(4.) Where in a conveyance a person conveying is not expressed to convey as beneficial owner, or as settlor, or as trustee, or as mortgagee, or as personal representative of a deceased person, or as committee of a lunatic so found by inquisition, or under an order of the Court, or by direction of a person as beneficial owner, no covenant on the part of the person conveying shall be, by virtue of this section, implied in the conveyance.

(5.) In this section a conveyance includes a deed conferring the right to admittance to copyhold or customary land, but does not include a demise by way of lease at a rent, or any customary assurance, other than a deed, conferring the right to admittance to copyhold or customary land.

(6.) The benefit of a covenant implied as aforesaid shall be annexed and incident to, and shall go with, the estate or interest

of the implied covenantee, and shall be capable of being enforced by every person in whom that estate or interest is, for the whole or any part thereof, from time to time vested. 44 & 45 Vict c. 41. *Covenants for Title.*

(7.) A covenant implied as aforesaid may be varied or extended by deed, and, as so varied or extended, shall, as far as may be, operate in the like manner, and with all the like incidents, effects, and consequences, as if such variations or extensions were directed in this section to be implied.

(8.) This section applies only to conveyances made after the commencement of this Act.

Execution of Purchase Deed.

Execution of Purchase Deed.

8.—(1.) On a sale, the purchaser shall not be entitled to require that the conveyance to him be executed in his presence, or in that of his solicitor, as such; but shall be entitled to have, at his own cost, the execution of the conveyance attested by some person appointed by him, who may, if he thinks fit, be his solicitor. Rights of purchaser as to execution.

(2.) This section applies only to sales made after the commencement of this Act.

Production and Safe Custody of Title Deeds.

Production and Safe Custody of Title Deeds

9.—(1.) Where a person retains possession of documents, and gives to another an acknowledgment in writing of the right of that other to production of those documents, and to delivery of copies thereof (in this section called an acknowledgment), that acknowledgment shall have effect as in this section provided. Acknowledgment of right to production, and undertaking for safe custody of documents.

(2.) An acknowledgment shall bind the documents to which it relates in the possession or under the control of the person who retains them, and in the possession or under the control of every other person having possession or control thereof from time to time, but shall bind each individual possessor or person as long only as he has possession or control thereof; and every person so having possession or control from time to time shall be bound specifically to perform the obligations imposed under this section by an acknowledgment, unless prevented from so doing by fire or other inevitable accident.

(3.) The obligations imposed under this section by an acknow-

44 & 45 Vict. c. 41.

Production and Safe Custody of Title Deeds.

ledgment are to be performed from time to time at the request in writing of the person to whom an acknowledgment is given, or of any person, not being a lessee at a rent, having or claiming any estate, interest, or right through or under that person, or otherwise becoming through or under that person interested in or affected by the terms of any document to which the acknowledgment relates.

(4.) The obligations imposed under this section by an acknowledgment are—

(i.) An obligation to produce the documents or any of them at all reasonable times for the purpose of inspection, and of comparison with abstracts or copies thereof, by the person entitled to request production or by any one by him authorized in writing; and

(ii.) An obligation to produce the documents or any of them at any trial, hearing, or examination in any court, or in the execution of any commission, or elsewhere in the United Kingdom, on any occasion on which production may properly be required, for proving or supporting the title or claim of the person entitled to request production, or for any other purpose relative to that title or claim; and

(iii.) An obligation to deliver to the person entitled to request the same true copies or extracts, attested or unattested, of or from the documents or any of them.

(5.) All costs and expenses of or incidental to the specific performance of any obligation imposed under this section by an acknowledgment shall be paid by the person requesting performance.

(6.) An acknowledgment shall not confer any right to damages for loss or destruction of, or injury to, the documents to which it relates, from whatever cause arising.

(7.) Any person claiming to be entitled to the benefit of an acknowledgment may apply to the Court for an order directing the production of the documents to which it relates, or any of them, or the delivery of copies of or extracts from those documents or any of them to him, or some person on his behalf; and the Court may, if it thinks fit, order production, or production and delivery, accordingly, and may give directions respecting the time, place, terms, and mode of production or delivery, and may

make such order as it thinks fit respecting the costs of the application, or any other matter connected with the application. 44 & 45 Vict. c. 41.

Production and Safe Custody of Title Deeds.

(8.) An acknowledgment shall by virtue of this Act satisfy any liability to give a covenant for production and delivery of copies of or extracts from documents.

(9.) Where a person retains possession of documents and gives to another an undertaking in writing for safe custody thereof, that undertaking shall impose on the person giving it, and on every person having possession or control of the documents from time to time, but on each individual possessor or person as long only as he has possession or control thereof, an obligation to keep the documents safe, whole, uncancelled, and undefaced, unless prevented from so doing by fire or other inevitable accident.

(10.) Any person claiming to be entitled to the benefit of such an undertaking may apply to the Court to assess damages for any loss, destruction of, or injury to the documents or any of them, and the Court may, if it thinks fit, direct an inquiry respecting the amount of damages, and order payment thereof by the person liable, and may make such order as it thinks fit respecting the costs of the application, or any other matter connected with the application.

(11.) An undertaking for safe custody of documents shall by virtue of this Act satisfy any liability to give a covenant for safe custody of documents.

(12.) The rights conferred by an acknowledgment or an undertaking under this section shall be in addition to all such other rights relative to the production, or inspection, or the obtaining of copies of documents as are not, by virtue of this Act, satisfied by the giving of the acknowledgment or undertaking, and shall have effect subject to the terms of the acknowledgment or undertaking, and to any provisions therein contained.

(13.) This section applies only if and as far as a contrary intention is not expressed in the acknowledgment or undertaking.

(14.) This section applies only to an acknowledgment or undertaking given, or a liability respecting documents incurred, after the commencement of this Act.

44 & 45 VICT. c. 41.

III.—LEASES.

LEASES.

Rent and benefit of lessee's covenants to run with reversion.

10.—(1.) Rent reserved by a lease, and the benefit of every covenant or provision therein contained, having reference to the subject-matter thereof, and on the lessee's part to be observed or performed, and every condition of re-entry and other condition therein contained, shall be annexed and incident to and shall go with the reversionary estate in the land, or in any part thereof, immediately expectant on the term granted by the lease, notwithstanding severance of that reversionary estate, and shall be capable of being recovered, received, enforced, and taken advantage of by the person from time to time entitled, subject to the term, to the income of the whole or any part, as the case may require, of the land leased.

(2.) This section applies only to leases made after the commencement of this Act.

Obligation of lessor's covenants to run with reversion.

11.—(1.) The obligation of a covenant entered into by a lessor with reference to the subject-matter of the lease shall, if and as far as the lessor has power to bind the reversionary estate immediately expectant on the term granted by the lease, be annexed and incident to and shall go with that reversionary estate, or the several parts thereof, notwithstanding severance of that reversionary estate, and may be taken advantage of and enforced by the person in whom the term is from time to time vested by conveyance, devolution in law, or otherwise; and, if and as far as the lessor has power to bind the person from time to time entitled to that reversionary estate, the obligation aforesaid may be taken advantage of and enforced against any person so entitled.

(2.) This section applies only to leases made after the commencement of this Act.

Apportionment of conditions on severance, &c.

12.—(1.) Notwithstanding the severance by conveyance, surrender, or otherwise, of the reversionary estate in any land comprised in a lease, and notwithstanding the avoidance or cesser in any other manner of the term granted by a lease as to part only of the land comprised therein, every condition or right of re-entry, and every other condition, contained in the lease, shall be apportioned, and shall remain annexed to the severed parts of

the reversionary estate as severed, and shall be in force with respect to the term whereon each severed part is reversionary, or the term in any land which has not been surrendered, or as to which the term has not been avoided or has not otherwise ceased, in like manner as if the land comprised in each severed part, or the land as to which the term remains subsisting, as the case may be, had alone originally been comprised in the lease. 44 & 45 Vict. c. 41.

(2.) This section applies only to leases made after the commencement of this Act.

On sub-demise, title to leasehold reversion not to be required.

13.—(1.) On a contract to grant a lease for a term of years to be derived out of a leasehold interest, with a leasehold reversion, the intended lessee shall not have the right to call for the title to that reversion.

(2.) This section applies only if and as far as a contrary intention is not expressed in the contract, and shall have effect subject to the terms of the contract and to the provisions therein contained.

(3.) This section applies only to contracts made after the commencement of this Act.

Forfeiture.

Forfeiture.

Restrictions on and relief against forfeiture of leases.

14.—(1.) A right of re-entry or forfeiture under any proviso or stipulation in a lease, for a breach of any covenant or condition in the lease, shall not be enforceable, by action or otherwise, unless and until the lessor serves on the lessee a notice specifying the particular breach complained of and, if the breach is capable of remedy, requiring the lessee to remedy the breach, and, in any case, requiring the lessee to make compensation in money for the breach, and the lessee fails, within a reasonable time thereafter, to remedy the breach, if it is capable of remedy, and to make reasonable compensation in money, to the satisfaction of the lessor, for the breach.

(2.) Where a lessor is proceeding, by action or otherwise, to enforce such a right of re-entry or forfeiture, the lessee may, in the lessor's action, if any, or in any action brought by himself, apply to the Court for relief; and the Court may grant or refuse

44 & 45 Vict. c. 41. *Forfeiture.*

relief, as the Court, having regard to the proceedings and conduct of the parties under the foregoing provisions of this section, and to all the other circumstances, thinks fit; and in case of relief may grant it on such terms, if any, as to costs, expenses, damages, compensation, penalty, or otherwise, including the granting of an injunction to restrain any like breach in the future, as the Court, in the circumstances of each case, thinks fit.

(3.) For the purposes of this section a lease includes an original or derivative under-lease, also a grant at a fee farm rent, or securing a rent by condition; and a lessee includes an original or derivative under-lessee, and the heirs, executors, administrators, and assigns of a lessee, also a grantee under such a grant as aforesaid, his heirs and assigns; and a lessor includes an original or derivative under-lessor, and the heirs, executors, administrators, and assigns of a lessor, also a grantor as aforesaid, and his heirs and assigns.

(4.) This section applies although the proviso or stipulation under which the right of re-entry or forfeiture accrues is inserted in the lease in pursuance of the directions of any Act of Parliament.

(5.) For the purposes of this section a lease limited to continue as long only as the lessee abstains from committing a breach of covenant shall be and take effect as a lease to continue for any longer term for which it could subsist, but determinable by a proviso for re-entry on such a breach.

(6.) This section does not extend—

(i.) To a covenant or condition against the assigning, underletting, parting with the possession, or disposing of the land leased; or to a condition for forfeiture on the bankruptcy of the lessee, or on the taking in execution of the lessee's interest; or

(ii.) In case of a mining lease, to a covenant or condition for allowing the lessor to have access to or inspect books, accounts, records, weighing machines or other things, or to enter or inspect the mine or the workings thereof.

(7.) The enactments described in Part I. of the Second Schedule to this Act are hereby repealed.

(8.) This section shall not affect the law relating to re-entry or forfeiture or relief in case of non-payment of rent. 44 & 45 Vict. c. 41. *Forfeiture.*

(9.) This section applies to leases made either before or after the commencement of this Act, and shall have effect notwithstanding any stipulation to the contrary.

IV.—Mortgages.

MORTGAGES.

Obligation on mortgagee to transfer instead of re-conveying.

15.—(1.) Where a mortgagor is entitled to redeem, he shall, by virtue of this Act, have power to require the mortgagee, instead of re-conveying, and on the terms on which he would be bound to re-convey, to assign the mortgage debt and convey the mortgaged property to any third person, as the mortgagor directs; and the mortgagee shall, by virtue of this Act, be bound to assign and convey accordingly.

(2.) This section does not apply in the case of a mortgagee being or having been in possession.

(3.) This section applies to mortgages made either before or after the commencement of this Act, and shall have effect notwithstanding any stipulation to the contrary.

Power for mortgagor to inspect title deeds.

16.—(1.) A mortgagor, as long as his right to redeem subsists, shall, by virtue of this Act, be entitled from time to time, at reasonable times, on his request, and at his own cost, and on payment of the mortgagee's costs and expenses in this behalf, to inspect and make copies or abstracts of or extracts from the documents of title relating to the mortgaged property in the custody or power of the mortgagee.

(2.) This section applies only to mortgages made after the commencement of this Act, and shall have effect notwithstanding any stipulation to the contrary.

Restriction on consolidation of mortgages.

17.—(1.) A mortgagor seeking to redeem any one mortgage, shall, by virtue of this Act, be entitled to do so, without paying any money due under any separate mortgage made by him, or by any person through whom he claims, on property other than that comprised in the mortgage which he seeks to redeem.

(2.) This section applies only if and as far as a contrary

45 Vict. c. 41.

intention is not expressed in the mortgage deeds or one of them.

(3.) This section applies only where the mortgages or one of them are or is made after the commencement of this Act.

Leases.

Leases.

Leasing powers of mortgagor and of mortgagee in possession.

18.—(1.) A mortgagor of land while in possession shall, as against every incumbrancer, have, by virtue of this Act, power to make from time to time any such lease of the mortgaged land, or any part thereof, as is in this section described and authorized.

(2.) A mortgagee of land while in possession shall, as against all prior incumbrancers, if any, and as against the mortgagor, have, by virtue of this Act, power to make from time to time any such lease as aforesaid.

(3.) The leases which this section authorizes are—

(i.) An agricultural or occupation lease for any term not exceeding twenty-one years; and

(ii.) A building lease for any term not exceeding ninety-nine years.

(4.) Every person making a lease under this section may execute and do all assurances and things necessary or proper in that behalf.

(5.) Every such lease shall be made to take effect in possession not later than twelve months after its date.

(6.) Every such lease shall reserve the best rent that can reasonably be obtained, regard being had to the circumstances of the case, but without any fine being taken.

(7.) Every such lease shall contain a covenant by the lessee for payment of the rent, and a condition of re-entry on the rent not being paid within a time therein specified not exceeding thirty days.

(8.) A counterpart of every such lease shall be executed by the lessee and delivered to the lessor, of which execution and delivery the execution of the lease by the lessor shall, in favour of the lessee and all persons deriving title under him, be sufficient evidence.

(9.) Every such building lease shall be made in consideration of the lessee, or some person by whose direction the lease is

granted, having erected, or agreeing to erect within not more than five years from the date of the lease, buildings, new or additional, or having improved or repaired buildings, or agreeing to improve or repair buildings within that time, or having executed, or agreeing to execute, within that time, on the land leased, an improvement for or in connexion with building purposes. 44 & 45 Vict. c. 41. *Leases.*

(10.) In any such building lease a peppercorn rent, or a nominal or other rent less than the rent ultimately payable, may be made payable for the first five years, or any less part of the term.

(11.) In case of a lease by the mortgagor, he shall, within one month after making the lease, deliver to the mortgagee, or, where there are more than one, to the mortgagee first in priority, a counterpart of the lease duly executed by the lessee; but the lessee shall not be concerned to see that this provision is complied with.

(12.) A contract to make or accept a lease under this section may be enforced by or against every person on whom the lease if granted would be binding.

(13.) This section applies only if and as far as a contrary intention is not expressed by the mortgagor and mortgagee in the mortgage deed, or otherwise in writing, and shall have effect subject to the terms of the mortgage deed or of any such writing and to the provisions therein contained.

(14.) Nothing in this Act shall prevent the mortgage deed from reserving to or conferring on the mortgagor or the mortgagee, or both, any further or other powers of leasing or having reference to leasing; and any further or other powers so reserved or conferred shall be exerciseable, as far as may be, as if they were conferred by this Act, and with all the like incidents, effects, and consequences, unless a contrary intention is expressed in the mortgage deed.

(15.) Nothing in this Act shall be construed to enable a mortgagor or mortgagee to make a lease for any longer term or on any other conditions than such as could have been granted or imposed by the mortgagor, with the concurrence of all the incumbrancers, if this Act had not been passed.

(16.) This section applies only in case of a mortgage made after the commencement of this Act; but the provisions thereof,

44 & 45 Vict. c. 41.

Leases.

or any of them, may, by agreement in writing made after the commencement of this Act, between mortgagor and mortgagee, be applied to a mortgage made before the commencement of this Act, so, nevertheless, that any such agreement shall not prejudicially affect any right or interest of any mortgagee not joining in or adopting the agreement.

(17.) The provisions of this section referring to a lease shall be construed to extend and apply, as far as circumstances admit, to any letting, and to an agreement, whether in writing or not, for leasing or letting.

Sale; Insurance; Receiver; Timber.

Sale; Insurance; Receiver; Timber.

Powers incident to estate or interest of mortgagee.

19.—(1.) A mortgagee, where the mortgage is made by deed, shall, by virtue of this Act, have the following powers, to the like extent as if they had been in terms conferred by the mortgage deed, but not further (namely):

(i.) A power, when the mortgage money has become due, to sell, or to concur with any other person in selling, the mortgaged property, or any part thereof, either subject to prior charges, or not, and either together or in lots, by public auction or by private contract, subject to such conditions respecting title, or evidence of title, or other matter, as he (the mortgagee) thinks fit, with power to vary any contract for sale, and to buy in at an auction, or to rescind any contract for sale, and to re-sell, without being answerable for any loss occasioned thereby; and

(ii.) A power, at any time after the date of the mortgage deed, to insure and keep insured against loss or damage by fire any building, or any effects or property of an insurable nature, whether affixed to the freehold or not, being or forming part of the mortgaged property, and the premiums paid for any such insurance shall be a charge on the mortgaged property, in addition to the mortgage money, and with the same priority, and with interest at the same rate, as the mortgage money; and

(iii.) A power, when the mortgage money has become due, to appoint a receiver of the income of the mortgaged property, or of any part thereof; and

(iv.) A power, while the mortgagee is in possession, to cut and sell timber and other trees ripe for cutting, and not planted or left standing for shelter or ornament, or to contract for any such cutting and sale, to be completed within any time not exceeding twelve months from the making of the contract. 44 & 45 Vict. c. 41. *Sale; Insurance; Receiver; Timber.*

(2.) The provisions of this Act relating to the foregoing powers, comprised either in this section, or in any subsequent section regulating the exercise of those powers, may be varied or extended by the mortgage deed, and, as so varied or extended, shall, as far as may be, operate in the like manner and with all the like incidents, effects, and consequences, as if such variations or extensions were contained in this Act.

(3.) This section applies only if and as far as a contrary intention is not expressed in the mortgage deed, and shall have effect subject to the terms of the mortgage deed and to the provisions therein contained.

(4.) This section applies only where the mortgage deed is executed after the commencement of this Act.

20. A mortgagee shall not exercise the power of sale conferred by this Act unless and until— Regulation of exercise of power of sale.

(i.) Notice requiring payment of the mortgage money has been served on the mortgagor or one of several mortgagors, and default has been made in payment of the mortgage-money, or of part thereof, for three months after such service; or

(ii.) Some interest under the mortgage is in arrear and unpaid for two months after becoming due; or

(iii.) There has been a breach of some provision contained in the mortgage deed or in this Act, and on the part of the mortgagor, or of some person concurring in making the mortgage, to be observed or performed, other than and besides a covenant for payment of the mortgage money or interest thereon.

21.—(1.) A mortgagee exercising the power of sale conferred by this Act shall have power, by deed, to convey the property sold, for such estate and interest therein as is the subject of the mortgage, freed from all estates, interests, and rights to which the mortgage has priority, but subject to all estates, interests, Conveyance, receipt, &c. on sale.

41 & 45 Vict c. 41.

Sale; Insurance; Receiver; Timber.

and rights which have priority to the mortgage; except that, in the case of copyhold or customary land, the legal right to admittance shall not pass by a deed under this section, unless the deed is sufficient otherwise by law, or is sufficient by custom, in that behalf.

(2.) Where a conveyance is made in professed exercise of the power of sale conferred by this Act, the title of the purchaser shall not be impeachable on the ground that no case had arisen to authorise the sale, or that due notice was not given, or that the power was otherwise improperly or irregularly exercised; but any person damnified by an unauthorised, or improper, or irregular exercise of the power shall have his remedy in damages against the person exercising the power.

(3.) The money which is received by the mortgagee, arising from the sale after discharge of prior incumbrances to which the sale is not made subject, if any, or after payment into Court under this Act of a sum to meet any prior incumbrance, shall be held by him in trust to be applied by him, first, in payment of all costs, charges, and expenses, properly incurred by him, as incident to the sale or any attempted sale, or otherwise; and secondly, in discharge of the mortgage money, interest, and costs, and other money, if any, due under the mortgage; and the residue of the money so received shall be paid to the person entitled to the mortgaged property, or authorised to give receipts for the proceeds of the sale thereof.

(4.) The power of sale conferred by this Act may be exercised by any person for the time being entitled to receive and give a discharge for the mortgage money.

(5.) The power of sale conferred by this Act shall not affect the right of foreclosure.

(6.) The mortgagee, his executors, administrators, or assigns, shall not be answerable for any involuntary loss happening in or about the exercise or execution of the power of sale conferred by this Act or of any trust connected therewith.

(7.) At any time after the power of sale conferred by this Act has become exerciseable, the person entitled to exercise the same may demand and recover from any person, other than a person having in the mortgaged property an estate, interest, or right in priority to the mortgage, all the deeds and documents relating to the property, or to the title thereto, which a purchaser

under the power of sale would be entitled to demand and recover from him.

Mortgagee's receipts, discharges, &c.

22.—(1.) The receipt in writing of a mortgagee shall be a sufficient discharge for any money arising under the power of sale conferred by this Act, or for any money or securities comprised in his mortgage, or arising thereunder; and a person paying or transferring the same to the mortgagee shall not be concerned to inquire whether any money remains due under the mortgage.

(2.) Money received by a mortgagee under his mortgage or from the proceeds of securities comprised in his mortgage shall be applied in like manner as in this Act directed respecting money received by him arising from a sale under the power of sale conferred by this Act; but with this variation, that the costs, charges, and expenses payable shall include the costs, charges, and expenses properly incurred of recovering and receiving the money or securities, and of conversion of securities into money, instead of those incident to sale.

Amount and application of insurance money.

23.—(1.) The amount of an insurance effected by a mortgagee against loss or damage by fire under the power in that behalf conferred by this Act shall not exceed the amount specified in the mortgage deed, or, if no amount is therein specified, then shall not exceed two third parts of the amount that would be required, in case of total destruction, to restore the property insured.

(2.) An insurance shall not, under the power conferred by this Act, be effected by a mortgagee in any of the following cases (namely):

(i.) Where there is a declaration in the mortgage deed that no insurance is required:

(ii.) Where an insurance is kept up by or on behalf of the mortgagor in accordance with the mortgage deed:

(iii.) Where the mortgage deed contains no stipulation respecting insurance, and an insurance is kept up by or on behalf of the mortgagor, to the amount in which the mortgagee is by this Act authorised to insure.

(3.) All money received on an insurance effected under the mortgage deed or under this Act shall, if the mortgagee so re-

44 & 45 Vict. c. 41.
Sale; Insurance; Receiver; Timber.

quires, be applied by the mortgagor in making good the loss or damage in respect of which the money is received.

(4.) Without prejudice to any obligation to the contrary imposed by law, or by special contract, a mortgagee may require that all money received on an insurance be applied in or towards discharge of the money due under his mortgage.

Appointment, powers, remuneration, and duties of, receiver.

24.—(1.) A mortgagee entitled to appoint a receiver under the power in that behalf conferred by this Act shall not appoint a receiver until he has become entitled to exercise the power of sale conferred by this Act, but may then, by writing under his hand, appoint such person as he thinks fit to be receiver.

(2.) The receiver shall be deemed to be the agent of the mortgagor; and the mortgagor shall be solely responsible for the receiver's acts or defaults, unless the mortgage deed otherwise provides.

(3.) The receiver shall have power to demand and recover all the income of the property of which he is appointed receiver, by action, distress, or otherwise, in the name either of the mortgagor or of the mortgagee, to the full extent of the estate or interest which the mortgagor could dispose of, and to give effectual receipts, accordingly, for the same.

(4.) A person paying money to the receiver shall not be concerned to inquire whether any case has happened to authorise the receiver to act.

(5.) The receiver may be removed, and a new receiver may be appointed, from time to time by the mortgagee by writing under his hand.

(6.) The receiver shall be entitled to retain out of any money received by him, for his remuneration, and in satisfaction of all costs, charges, and expenses incurred by him as receiver, a commission at such rate, not exceeding five per centum on the gross amount of all money received, as is specified in his appointment, and if no rate is so specified, then at the rate of five per centum on that gross amount, or at such higher rate as the court thinks fit to allow, on application made by him for that purpose.

(7.) The receiver shall, if so directed in writing by the mortgagee, insure and keep insured against loss or damage by fire, out of the money received by him, any building, effects, or pro-

perty comprised in the mortgage, whether affixed to the freehold or not, being of an insurable nature. 44 & 45 Vict. c. 41.

Sale; Insurance; Receiver; Timber.

(8.) The receiver shall apply all money received by him as follows (namely):

(i.) In discharge of all rents, taxes, rates, and outgoings whatever affecting the mortgaged property; and

(ii.) In keeping down all annual sums or other payments, and the interest on all principal sums, having priority to the mortgage in right whereof he is receiver; and

(iii.) In payment of his commission, and of the premiums on fire, life, or other insurances, if any, properly payable under the mortgage deed or under this Act, and the cost of executing necessary or proper repairs directed in writing by the mortgagee; and

(iv.) In payment of the interest accruing due in respect of any principal money due under the mortgage;

and shall pay the residue of the money received by him to the person who, but for the possession of the receiver, would have been entitled to receive the income of the mortgaged property, or who is otherwise entitled to that property.

Action respecting Mortgage.

Action respecting Mortgage.

Sale of mortgaged property in action for foreclosure, &c.

25.—(1.) Any person entitled to redeem mortgaged property may have a judgment or order for sale instead of, for redemption in an action brought by him either for redemption alone, or for sale alone, or for sale or redemption, in the alternative.

(2.) In any action, whether for foreclosure, or for redemption, or for sale, or for the raising and payment in any manner of mortgage money, the Court, on the request of the mortgagee, or of any person interested either in the mortgage money or in the right of redemption, and, notwithstanding the dissent of any other person, and notwithstanding that the mortgagee or any person so interested does not appear in the action, and without allowing any time for redemption or for payment of any mortgage money, may, if it thinks fit, direct a sale of the mortgaged property, on such terms as it thinks fit, including, if it thinks fit, the deposit in Court of a reasonable sum fixed by the Court, to meet the expenses of sale and to secure performance of the terms.

(3.) But, in an action brought by a person interested in the

44 & 45 Vict. c. 41. *Action respecting Mortgage.*

right of redemption and seeking a sale, the Court may, on the application of any defendant, direct the plaintiff to give such security for costs as the Court thinks fit, and may give the conduct of the sale to any defendant, and may give such directions as it thinks fit respecting the costs of the defendants or any of them.

(4.) In any case within this section the Court may, if it thinks fit, direct a sale without previously determining the priorities of incumbrancers.

(5.) This section applies to actions brought either before or after the commencement of this Act.

15 & 16 Vict. c. 86, s. 48.

(6.) The enactment described in Part II. of the Second Schedule to this Act is hereby repealed.

(7.) This section does not extend to Ireland.

STATUTORY MORTGAGE.

V.—Statutory Mortgage.

Form of statutory mortgage in schedule.

26.—(1.) A mortgage of freehold or leasehold land may be made by a deed expressed to be made by way of statutory mortgage, being in the form given in Part I. of the Third Schedule to this Act, with such variations and additions, if any, as circumstances may require, and the provisions of this section shall apply thereto.

(2.) There shall be deemed to be included, and there shall by virtue of this Act be implied, in the mortgage deed—

First, a covenant with the mortgagee by the person expressed therein to convey as mortgagor to the effect following (namely):

That the mortgagor will, on the stated day, pay to the mortgagee the stated mortgage money, with interest thereon in the meantime, at the stated rate, and will thereafter, if and as long as the mortgage money or any part thereof remains unpaid, pay to the mortgagee interest thereon, or on the unpaid part thereof, at the stated rate, by equal half-yearly payments, the first thereof to be made at the end of six calendar months from the day stated for payment of the mortgage money:

Secondly, a proviso to the effect following (namely):

That if the mortgagor, on the stated day, pays to the mortgagee the stated mortgage money, with interest thereon in

the meantime, at the stated rate, the mortgagee at any time thereafter, at the request and cost of the mortgagor, shall re-convey the mortgaged property to the mortgagor, or as he shall direct.

Forms of statutory transfer of mortgage in schedule.

27.—(1.) A transfer of a statutory mortgage may be made by a deed expressed to be made by way of statutory transfer of mortgage, being in such one of the three forms (A.) and (B.) and (C.) given in Part II. of the Third Schedule to this Act as may be appropriate to the case, with such variations and additions, if any, as circumstances may require, and the provisions of this section shall apply thereto.

(2.) In whichever of those three forms the deed of transfer is made, it shall have effect as follows (namely):

(i.) There shall become vested in the person to whom the benefit of the mortgage is expressed to be transferred, who, with his executors, administrators, and assigns, is hereafter in this section designated the transferee, the right to demand, sue for, recover, and give receipts for the mortgage money, or the unpaid part thereof, and the interest then due, if any, and thenceforth to become due thereon, and the benefit of all securities for the same, and the benefit of and the right to sue on all covenants with the mortgagee, and the right to exercise all powers of the mortgagee:

(ii.) All the estate and interest, subject to redemption, of the mortgagee in the mortgaged land shall vest in the transferee, subject to redemption.

(3.) If the deed of transfer is made in the form (B.), there shall also be deemed to be included, and there shall by virtue of this Act be implied therein, a covenant with the transferee by the person expressed to join therein as covenantor to the effect following (namely):

That the covenantor will, on the next of the days by the mortgage deed fixed for payment of interest, pay to the transferee the stated mortgage money, or so much thereof as then remains unpaid, with interest thereon, or on the unpaid part thereof, in the meantime, at the rate stated in the mortgage deed; and will thereafter, as long as the mortgage money or any part thereof remains unpaid, pay to the transferee interest on that sum, or the unpaid part thereof,

44 & 45 Vict. c. 41.

at the same rate, on the successive days by the mortgage deed fixed for payment of interest.

(4.) If the deed of transfer is made in the form (C.), it shall, by virtue of this Act, operate, not only as a statutory transfer of mortgage, but also as a statutory mortgage, and the provisions of this section shall have effect in relation thereto accordingly; but it shall not be liable to any increased stamp duty by reason only of it being designated a mortgage.

Implied covenants, joint and several.

28. In a deed of statutory mortgage, or of statutory transfer of mortgage, where more persons than one are expressed to convey as mortgagors, or to join as covenantors, the implied covenant on their part shall be deemed to be a joint and several covenant by them; and where there are more mortgagees or more transferees than one, the implied covenant with them shall be deemed to be a covenant with them jointly, unless the amount secured is expressed to be secured to them in shares or distinct sums, in which latter case the implied covenant with them shall be deemed to be a covenant with each severally in respect of the share or distinct sum secured to him.

Form of re-conveyance of statutory mortgage in schedule.

29. A re-conveyance of a statutory mortgage may be made by a deed expressed to be made by way of statutory re-conveyance of mortgage, being in the form given in Part III. of the Third Schedule to this Act, with such variations and additions, if any, as circumstances may require.

TRUST AND MORTGAGE ESTATES ON DEATH.

VI.—Trust and Mortgage Estates on Death.

Devolution of trust and mortgage estates on death.

30.—(1.) Where an estate or interest of inheritance, or limited to the heir as special occupant, in any tenements or hereditaments, corporeal or incorporeal, is vested on any trust, or by way of mortgage, in any person solely, the same shall, on his death, notwithstanding any testamentary disposition, devolve to and become vested in his personal representatives or representative from time to time, in like manner as if the same were a chattel real vesting in them or him; and accordingly all the like powers, for one only of several joint personal representatives, as well as for a single personal representative, and for all

the personal representatives together, to dispose of and otherwise deal with the same, shall belong to the deceased's personal representatives or representative from time to time, with all the like incidents, but subject to all the like rights, equities, and obligations, as if the same were a chattel real vesting in them or him; and, for the purposes of this section, the personal representatives, for the time being, of the deceased, shall be deemed in law his heirs and assigns, within the meaning of all trusts and powers. 44 & 45 Vict. c. 41.

(2.) Section four of the Vendor and Purchaser Act, 1874, and section forty-eight of the Land Transfer Act, 1875, are hereby repealed. 37 & 38 Vict. c. 78. 38 & 39 Vict. c. 87.

(3.) This section, including the repeals therein, applies only in cases of death after the commencement of this Act.

VII.—Trustees and Executors.

TRUSTEES AND EXECUTORS.

Appointment of new trustees, vesting of trust property, &c.

31.—(1.) Where a trustee, either original or substituted, and whether appointed by a Court or otherwise, is dead, or remains out of the United Kingdom for more than twelve months, or desires to be discharged from the trusts or powers reposed in or conferred on him, or refuses or is unfit to act therein, or is incapable of acting therein, then the person or persons nominated for this purpose by the instrument, if any, creating the trust, or if there is no such person, or no such person able and willing to act, then the surviving or continuing trustees or trustee for the time being, or the personal representatives of the last surviving or continuing trustee, may, by writing, appoint another person or other persons to be a trustee or trustees in the place of the trustee dead, remaining out of the United Kingdom, desiring to be discharged, refusing or being unfit, or being incapable, as aforesaid.

(2.) On an appointment of a new trustee, the number of trustees may be increased.

(3.) On an appointment of a new trustee, it shall not be obligatory to appoint more than one new trustee, where only one trustee was originally appointed, or to fill up the original number of trustees, where more than two trustees were originally appointed; but, except where only one trustee was originally ap-

44 & 45 Vict. c. 41.

pointed, a trustee shall not be discharged under this section from his trust unless there will be at least two trustees to perform the trust.

(4.) On an appointment of a new trustee any assurance or thing requisite for vesting the trust property, or any part thereof, jointly in the persons who are the trustees, shall be executed or done.

(5.) Every new trustee so appointed, as well before as after all the trust property becomes by law, or by assurance, or otherwise, vested in him, shall have the same powers, authorities, and discretions, and may in all respects act, as if he had been originally appointed a trustee by the instrument, if any, creating the trust.

(6.) The provisions of this section relative to a trustee who is dead include the case of a person nominated trustee in a will but dying before the testator; and those relative to a continuing trustee include a refusing or retiring trustee, if willing to act in the execution of the provisions of this section.

(7.) This section applies only if and as far as a contrary intention is not expressed in the instrument, if any, creating the trust, and shall have effect subject to the terms of that instrument and to any provisions therein contained.

(8.) This section applies to trusts created either before or after the commencement of this Act.

Retirement of trustee.

32.—(1.) Where there are more than two trustees, if one of them by deed declares that he is desirous of being discharged from the trust, and if his co-trustees and such other person, if any, as is empowered to appoint trustees, by deed consent to the discharge of the trustee, and to the vesting in the co-trustees alone of the trust property, then the trustee desirous of being discharged shall be deemed to have retired from the trust, and shall, by the deed, be discharged therefrom under this Act, without any new trustee being appointed in his place.

(2.) Any assurance or thing requisite for vesting the trust property in the continuing trustees alone shall be executed or done.

(3.) This section applies only if and as far as a contrary intention is not expressed in the instrument, if any, creating

the trust, and shall have effect subject to the terms of that instrument and to any provisions therein contained. 44 & 45 Vict. c. 41.

(4.) This section applies to trusts created either before or after the commencement of this Act.

Powers of new trustee appointed by court.

33.—(1.) Every trustee appointed by the Court of Chancery, or by the Chancery Division of the Court, or by any other court of competent jurisdiction, shall, as well before as after the trust property becomes by law, or by assurance, or otherwise, vested in him, have the same powers, authorities, and discretions, and may in all respects act, as if he had been originally appointed a trustee by the instrument, if any, creating the trust.

(2.) This section applies to appointments made either before or after the commencement of this Act.

Vesting of trust property in new or continuing trustees.

34.—(1.) Where a deed by which a new trustee is appointed to perform any trust contains a declaration by the appointor to the effect that any estate or interest in any land subject to the trust, or in any chattel so subject, or the right to recover and receive any debt or other thing in action so subject, shall vest in the persons who by virtue of the deed become and are the trustees for performing the trust, that declaration shall, without any conveyance or assignment, operate to vest in those persons, as joint tenants, and for the purposes of the trust, that estate, interest, or right.

(2.) Where a deed by which a retiring trustee is discharged under this Act contains such a declaration as is in this section mentioned by the retiring and continuing trustees, and by the other person, if any, empowered to appoint trustees, that declaration shall, without any conveyance or assignment, operate to vest in the continuing trustees alone, as joint tenants, and for the purposes of the trust, the estate, interest, or right to which the declaration relates.

(3.) This section does not extend to any legal estate or interest in copyhold or customary land, or to land conveyed by way of mortgage for securing money subject to the trust, or to any such share, stock, annuity, or property as is only transferable in books kept by a company or other body, or in manner prescribed by or under Act of Parliament.

(4.) For purposes of registration of the deed in any registry,

44 & 45 Vict. c. 41.

the person or persons making the declaration shall be deemed the conveying party or parties, and the conveyance shall be deemed to be made by him or them under a power conferred by this Act.

(5.) This section applies only to deeds executed after the commencement of this Act.

Power for trustees for sale to sell by auction, &c.

35.—(1.) Where a trust for sale or a power of sale of property is vested in trustees, they may sell or concur with any other person in selling all or any part of the property, either subject to prior charges or not, and either together or in lots, by public auction or by private contract, subject to any such conditions respecting title or evidence of title, or other matter, as the trustees think fit, with power to vary any contract for sale, and to buy in at any auction, or to rescind any contract for sale, and to re-sell, without being answerable for any loss.

(2.) This section applies only if and as far as a contrary intention is not expressed in the instrument creating the trust or power, and shall have effect subject to the terms of that instrument and to the provisions therein contained.

(3.) This section applies only to a trust or power created by an instrument coming into operation after the commencement of this Act.

Trustees' receipts.

36.—(1.) The receipt in writing of any trustees or trustee for any money, securities, or other personal property or effects payable, transferable, or deliverable to them or him under any trust or power shall be a sufficient discharge for the same, and shall effectually exonerate the person paying, transferring, or delivering the same from seeing to the application or being answerable for any loss or misapplication thereof.

(2.) This section applies to trusts created either before or after the commencement of this Act.

Power for executors and trustees to compound, &c.

37. (1.) An executor may pay or allow any debt or claim on any evidence that he thinks sufficient.

(2.) An executor, or two or more trustees acting together, or a sole acting trustee where, by the instrument, if any, creating the trust, a sole trustee is authorised to execute the trusts and powers thereof, may, if and as he or they think fit, accept any

composition, or any security, real or personal, for any debt, or for any property, real or personal, claimed, and may allow any time for payment of any debt, and may compromise, compound, abandon, submit to arbitration, or otherwise settle any debt, account, claim, or thing whatever relating to the testator's estate or to the trust, and for any of those purposes may enter into, give, execute, and do such agreements, instruments of composition or arrangement, releases, and other things as to him or them seem expedient, without being responsible for any loss occasioned by any act or thing so done by him or them in good faith.

(3.) As regards trustees, this section applies only if and as far as a contrary intention is not expressed in the instrument, if any, creating the trust, and shall have effect subject to the terms of that instrument and to the provisions therein contained.

(4.) This section applies to executorships and trusts constituted or created either before or after the commencement of this Act.

Powers to two or more executors or trustees.

38.—(1.) Where a power or trust is given to or vested in two or more executors or trustees jointly, then, unless the contrary is expressed in the instrument, if any, creating the power or trust, the same may be exercised or performed by the survivor or survivors of them for the time being.

(2.) This section applies only to executorships and trusts constituted after or created by instruments coming into operation after the commencement of this Act.

VIII.—Married Women.

Power for Court to bind interest of married woman.

39.—(1.) Notwithstanding that a married woman is restrained from anticipation, the Court may, if it thinks fit, where it appears to the Court to be for her benefit, by judgment or order, with her consent, bind her interest in any property.

(2.) This section applies only to judgments or orders made after the commencement of this Act.

Power of attorney of married woman.

40.—(1.) A married woman, whether an infant or not, shall by virtue of this Act have power, as if she were unmarried and of full age, by deed, to appoint an attorney on her behalf for the purpose of executing any deed or doing any other act which

44 & 45 Vict. c. 41.

she might herself execute or do; and the provisions of this Act relating to instruments creating powers of attorney shall apply thereto (*a*).

(2.) This section applies only to deeds executed after the commencement of this Act.

INFANTS.

IX.—Infants.

Sales and leases on behalf of infant owner.

41. Where a person in his own right seised of or entitled to land for an estate in fee simple, or for any leasehold interest at a rent, is an infant, the land shall be deemed to be a settled estate within the Settled Estates Act, 1877.

40 & 41 Vict. c. 18.

Management of land and receipt and application of income during minority.

42.—(1.) If and as long as any person who would but for this section be beneficially entitled to the possession of any land is an infant, and being a woman is also unmarried, the trustees appointed for this purpose by the settlement, if any, or if there are none so appointed, then the persons, if any, who are for the time being under the settlement trustees with power of sale of the settled land, or of part thereof, or with power of consent to or approval of the exercise of such a power of sale, or if there are none, then any persons appointed as trustees for this purpose by the Court, on the application of a guardian or next friend of the infant, may enter into and continue in possession of the land; and in every such case the subsequent provisions of this section shall apply.

(2.) The trustees shall manage or superintend the management of the land, with full power to fell timber or cut underwood from time to time in the usual course for sale, or for repairs or otherwise, and to erect, pull down, rebuild, and repair houses, and other buildings and erections, and to continue the working of mines, minerals, and quarries which have usually been worked, and to drain or otherwise improve the land or any part thereof, and to insure against loss by fire, and to make allowances to and arrangements with tenants and others, and to determine tenancies, and to accept surrenders of leases and tenancies, and generally to deal with the land in a proper and due course of management; but so that, where the infant is impeachable for

(*a*) An attorney appointed by a married woman under this section cannot on her behalf execute any deed which independently of this section must have been acknowledged by her in order to pass her interest.

waste, the trustees shall not commit waste, and shall cut timber on the same terms only, and subject to the same restrictions, on and subject to which the infant could, if of full age, cut the same.

(3.) The trustees may, from time to time, out of the income of the land, including the produce of the sale of timber and underwood, pay the expenses incurred in the management, or in the exercise of any power conferred by this section, or otherwise in relation to the land, and all outgoings not payable by any tenant or other person, and shall keep down any annual sum, and the interest of any principal sum, charged on the land.

(4.) The trustees may apply at discretion any income which, in the exercise of such discretion, they deem proper, according to the infant's age, for his or her maintenance, education, or benefit, or pay thereout any money to the infant's parent or guardian, to be applied for the same purposes.

(5.) The trustees shall lay out the residue of the income of the land in investment on securities on which they are by the settlement, if any, or by law, authorized to invest trust money, with power to vary investments; and shall accumulate the income of the investments so made in the way of compound interest, by from time to time similarly investing such income and the resulting income of investments; and shall stand possessed of the accumulated fund arising from income of the land and from investments of income on the trusts following (namely):

(i.) If the infant attains the age of twenty-one years, then in trust for the infant;

(ii.) If the infant is a woman and marries while an infant, then in trust for her separate use, independently of her husband, and so that her receipt, after she marries, and though still an infant, shall be a good discharge; but

(iii.) If the infant dies while an infant, and being a woman without having been married, then, where the infant was, under a settlement, tenant for life, or by purchase tenant in tail or tail male or tail female, on the trusts, if any, declared of the accumulated fund by that settlement; but where no such trusts are declared, or the infant has taken the land from which the accumulated fund is derived by descent, and not by purchase, or the

44 & 45 Vict. c. 41.

infant is tenant for an estate in fee simple, absolute or determinable, then in trust for the infant's personal representatives, as part of the infant's personal estate; but the accumulations, or any part thereof, may at any time be applied as if the same were income arising in the then current year.

(6.) Where the infant's estate or interest is in an undivided share of land, the powers of this section relative to the land may be exercised jointly with persons entitled to possession of, or having power to act in relation to, the other undivided share or shares.

(7.) This section applies only if and as far as a contrary intention is not expressed in the instrument under which the interest of the infant arises, and shall have effect subject to the terms of that instrument and to the provisions therein contained.

(8.) This section applies only where that instrument comes into operation after the commencement of this Act.

Application by trustees of income of property of infant for maintenance, &c.

43.—(1.) Where any property is held by trustees in trust for an infant either for life or for any greater interest, and whether absolutely, or contingently on his attaining the age of twenty-one years, or on the occurrence of any event before his attaining that age, the trustees may, at their sole discretion, pay to the infant's parent or guardian, if any, or otherwise apply for or towards the infant's maintenance, education, or benefit, the income of that property, or any part thereof, whether there is any other fund applicable to the same purpose, or any person bound by law to provide for the infant's maintenance or education, or not.

(2.) The trustees shall accumulate all the residue of that income in the way of compound interest, by investing the same and the resulting income thereof from time to time on securities on which they are by the settlement, if any, or by law, authorized to invest trust money, and shall hold those accumulations for the benefit of the person who ultimately becomes entitled to the property from which the same arise: but so that the trustees may at any time, if they think fit, apply those accumulations, or any part thereof, as if the same were income arising in the then current year.

(3.) This section applies only if and as far as a contrary in-

tention is not expressed in the instrument under which the interest of the infant arises, and shall have effect subject to the terms of that instrument and to the provisions therein contained. 44 & 45 Vict. c. 41.

(4.) This section applies whether that instrument comes into operation before or after the commencement of this Act.

X.—Rentcharges and other Annual Sums.

RENT-CHARGES AND OTHER ANNUAL SUMS.

Remedies for recovery of annual sums charged on land.

44.—(1.) Where a person is entitled to receive out of any land, or out of the income of any land, any annual sum, payable half-yearly or otherwise, whether charged on the land or on the income of the land, and whether by way of rentcharge or otherwise, not being rent incident to a reversion, then, subject and without prejudice to all estates, interests, and rights having priority to the annual sum, the person entitled to receive the same shall have such remedies for recovering and compelling payment of the same as are described in this section, as far as those remedies might have been conferred by the instrument under which the annual sum arises, but not further.

(2.) If at any time the annual sum or any part thereof is unpaid for twenty-one days next after the time appointed for any payment in respect thereof, the person entitled to receive the annual sum may enter into and distrain on the land charged or any part thereof, and dispose according to law of any distress found, to the intent that thereby or otherwise the annual sum and all arrears thereof, and all costs and expenses occasioned by non-payment thereof, may be fully paid.

(3.) If at any time the annual sum or any part thereof is unpaid for forty days next after the time appointed for any payment in respect thereof, then, although no legal demand has been made for payment thereof, the person entitled to receive the annual sum may enter into possession of and hold the land charged or any part thereof, and take the income thereof, until thereby or otherwise the annual sum and all arrears thereof due at the time of his entry, or afterwards becoming due during his continuance in possession, and all costs and expenses occasioned by non-payment of the annual sum, are fully paid; and such possession when taken shall be without impeachment of waste.

(4.) In the like case the person entitled to the annual charge,

44 & 45 Vict. c. 41.

whether taking possession or not, may also by deed demise the land charged, or any part thereof, to a trustee for a term of years, with or without impeachment of waste, on trust, by mortgage, or sale, or demise, for all or any part of the term, of the land charged, or of any part thereof, or by receipt of the income thereof, or by all or any of those means, or by any other reasonable means, to raise and pay the annual sum and all arrears thereof due or to become due, and all costs and expenses occasioned by non-payment of the annual sum, or incurred in compelling or obtaining payment thereof, or otherwise relating thereto, including the costs of the preparation and execution of the deed of demise, and the costs of the execution of the trusts of that deed; and the surplus, if any, of the money raised, or of the income received, under the trusts of that deed shall be paid to the person for the time being entitled to the land therein comprised in reversion immediately expectant on the term thereby created.

(5.) This section applies only if and as far as a contrary intention is not expressed in the instrument under which the annual sum arises, and shall have effect subject to the terms of that instrument and to the provisions therein contained.

(6.) This section applies only where that instrument comes into operation after the commencement of this Act.

Redemption of quitrents and other perpetual charges.

45.—(1.) Where there is a quitrent, chief-rent, rentcharge, or other annual sum issuing out of land (in this section referred to as the rent), the Copyhold Commissioners shall at any time, on the requisition of the owner of the land, or of any person interested therein, certify the amount of money in consideration whereof the rent may be redeemed.

(2.) Where the person entitled to the rent is absolutely entitled thereto in fee simple in possession, or is empowered to dispose thereof absolutely, or to give an absolute discharge for the capital value thereof, the owner of the land, or any person interested therein, may, after serving one month's notice on the person entitled to the rent, pay or tender to that person the amount certified by the Commissioners.

(3.) On proof to the Commissioners that payment or tender has been so made, they shall certify that the rent is redeemed under this Act; and that certificate shall be final and conclusive,

and the land shall be thereby absolutely freed and discharged from the rent. 44 & 45 Vict. c. 41.

(4.) Every requisition under this section shall be in writing; and every certificate under this section shall be in writing, sealed with the seal of the Commissioners.

(5.) This section does not apply to tithe rentcharge, or to a rent reserved on a sale or lease, or to a rent made payable under a grant or licence for building purposes, or to any sum or payment issuing out of land not being perpetual.

(6.) This section applies to rents payable at, or created after, the commencement of this Act.

(7.) This section does not extend to Ireland.

XI.—Powers of Attorney.

Powers of Attorney.

Execution under power of attorney.

46.—(1.) The donee of a power of attorney may, if he thinks fit, execute or do any assurance, instrument, or thing in and with his own name and signature and his own seal, where sealing is required, by the authority of the donor of the power; and every assurance, instrument, and thing so executed and done shall be as effectual in law, to all intents, as if it had been executed or done by the donee of the power in the name and with the signature and seal of the donor thereof.

(2.) This section applies to powers of attorney created by instruments executed either before or after the commencement of this Act.

Payment by attorney under power without notice of death, &c., good.

47.—(1.) Any person making or doing any payment or act, in good faith, in pursuance of a power of attorney, shall not be liable in respect of the payment or act by reason that before the payment or act the donor of the power had died or become lunatic, of unsound mind, or bankrupt, or had revoked the power, if the fact of death, lunacy, unsoundness of mind, bankruptcy, or revocation was not at the time of the payment or act known to the person making or doing the same.

(2.) But this section shall not affect any right against the payee of any person interested in any money so paid; and that person shall have the like remedy against the payee as he would

44 & 45 Vict. c. 41.

have had against the payer if the payment had not been made by him.

(3.) This section applies only to payments and acts made and done after the commencement of this Act.

Deposit of original instruments creating powers of attorney.

48.—(1.) An instrument creating a power of attorney, its execution being verified by affidavit, statutory declaration, or other sufficient evidence, may, with the affidavit or declaration, if any, be deposited in the Central Office of the Supreme Court of Judicature.

(2.) A separate file of instruments so deposited shall be kept, and any person may search that file, and inspect every instrument so deposited, and an office copy thereof shall be delivered out to him on request.

(3.) A copy of an instrument so deposited may be presented at the office, and may be stamped or marked as an office copy, and when so stamped or marked shall become and be an office copy.

(4.) An office copy of an instrument so deposited shall without further proof be sufficient evidence of the contents of the instrument and of the deposit thereof in the Central Office.

(5.) General rules may be made for purposes of this section, regulating the practice of the Central Office, and prescribing, with the concurrence of the Commissioners of her Majesty's Treasury, the fees to be taken therein.

(6.) This section applies to instruments creating powers of attorney executed either before or after the commencement of this Act.

CONSTRUCTION AND EFFECT OF DEEDS AND OTHER INSTRUMENTS.

XII.—Construction and Effect of Deeds and other Instruments.

Use of word grant unnecessary.

49.—(1.) It is hereby declared that the use of the word grant is not necessary in order to convey tenements or hereditaments, corporeal or incorporeal.

(2.) This section applies to conveyances made before or after the commencement of this Act.

Conveyance by a person to himself, &c.

50.—(1.) Freehold land, or a thing in action, may be conveyed by a person to himself jointly with another person, by the

like means by which it might be conveyed by him to another person; and may, in like manner, be conveyed by a husband to his wife, and by a wife to her husband, alone or jointly with another person. 44 & 45 Vict. c. 41.

(2.) This section applies only to conveyances made after the commencement of this Act.

Words of limitation in fee or in tail.

51.—(1.) In a deed it shall be sufficient, in the limitation of an estate in fee simple, to use the words in fee simple, without the word heirs; and in the limitation of an estate in tail, to use the words in tail without the words heirs of the body; and in the limitation of an estate in tail male or in tail female, to use the words in tail male, or in tail female, as the case requires, without the words heirs male of the body, or heirs female of the body.

(2.) This section applies only to deeds executed after the commencement of this Act.

Powers simply collateral.

52.—(1.) A person to whom any power, whether coupled with an interest or not, is given may by deed release, or contract not to exercise, the power.

(2.) This section applies to powers created by instruments coming into operation either before or after the commencement of this Act.

Construction of supplemental or annexed deed.

53.—(1.) A deed expressed to be supplemental to a previous deed, or directed to be read as an annex thereto, shall, as far as may be, be read and have effect as if the deed so expressed or directed were made by way of indorsement on the previous deed, or contained a full recital thereof.

(2.) This section applies to deeds executed either before or after the commencement of this Act.

Receipt in deed sufficient.

54.—(1.) A receipt for consideration money or securities in the body of a deed shall be a sufficient discharge for the same to the person paying or delivering the same, without any further receipt for the same being indorsed on the deed.

(2.) This section applies only to deeds executed after the commencement of this Act.

Receipt in deed or indorsed,

55.—(1.) A receipt for consideration money or other consideration in the body of a deed or indorsed thereon shall, in

44 & 45 Vict. c. 41.

evidence for subsequent purchaser.

favour of a subsequent purchaser, not having notice that the money or other consideration thereby acknowledged to be received was not in fact paid or given, wholly or in part, be sufficient evidence of the payment or giving of the whole amount thereof.

(2.) This section applies only to deeds executed after the commencement of this Act.

Receipt in deed or indorsed, authority for payment to solicitor.

56.—(1.) Where a solicitor produces a deed, having in the body thereof or indorsed thereon a receipt for consideration money or other consideration, the deed being executed, or the indorsed receipt being signed, by the person entitled to give a receipt for that consideration, the deed shall be sufficient authority to the person liable to pay or give the same for his paying or giving the same to the solicitor, without the solicitor producing any separate or other direction or authority in that behalf from the person who executed or signed the deed or receipt.

(2.) This section applies only in cases where consideration is to be paid or given after the commencement of this Act.

Sufficiency of forms in 4th schedule.

57. Deeds in the form of and using the expressions in the Forms given in the Fourth Schedule to this Act, or in the like form or using expressions to the like effect, shall, as regards form and expression in relation to the provisions of this Act, be sufficient.

Covenants to bind heirs, &c.

58.—(1.) A covenant relating to land of inheritance, or devolving on the heir as special occupant, shall be deemed to be made with the covenantee, his heirs and assigns, and shall have effect as if heirs and assigns were expressed.

(2.) A covenant relating to land not of inheritance, or not devolving on the heir as special occupant, shall be deemed to be made with the covenantee, his executors, administrators, and assigns, and shall have effect as if executors, administrators, and assigns were expressed.

(3.) This section applies only to covenants made after the commencement of this Act.

Covenants to extend to heirs, &c.

59.—(1.) A covenant, and a contract under seal, and a bond or obligation under seal, though not expressed to bind the heirs, shall operate in law to bind the heirs and real estate, as well as

the executors and administrators and personal estate, of the person making the same, as if heirs were expressed. 44 & 45 Vict. c. 41.

(2.) This section extends to a covenant implied by virtue of this Act.

(3.) This section applies only if and as far as a contrary intention is not expressed in the covenant, contract, bond, or obligation, and shall have effect subject to the terms of the covenant, contract, bond, or obligation, and to the provisions therein contained.

(4.) This section applies only to a covenant, contract, bond, or obligation made or implied after the commencement of this Act.

Effect of covenant with two or more jointly.

60.—(1.) A covenant, and a contract under seal, and a bond or obligation under seal, made with two or more jointly, to pay money or to make a conveyance, or to do any other act, to them or for their benefit, shall be deemed to include, and shall, by virtue of this Act, imply, an obligation to do the act to, or for the benefit of, the survivor or survivors of them, and to, or for the benefit of, any other person to whom the right to sue on the covenant, contract, bond, or obligation devolves.

(2.) This section extends to a covenant implied by virtue of this Act.

(3.) This section applies only if and as far as a contrary intention is not expressed in the covenant, contract, bond, or obligation, and shall have effect subject to the covenant, contract, bond, or obligation, and to the provisions therein contained.

(4.) This section applies only to a covenant, contract, bond, or obligation made or implied after the commencement of this Act.

Effect of advance on joint account, &c.

61.—(1.) Where in a mortgage, or an obligation for payment of money, or a transfer of a mortgage or of such an obligation, he sum, or any part of the sum, advanced or owing is expressed to be advanced by or owing to more persons than one out of money, or as money, belonging to them on a joint account, or a mortgage, or such an obligation, or such a transfer is made to more persons than one, jointly, and not in shares, the mortgage-money, or other money, or money's worth for the time being due to those persons on the mortgage or obligation, shall be

44 & 45 Vict. c. 41.

deemed to be and remain money or money's worth belonging to those persons on a joint account, as between them and the mortgagor or obligor; and the receipt in writing of the survivors or last survivor of them, or of the personal representatives of the last survivor, shall be a complete discharge for all money or money's worth for the time being due, notwithstanding any notice to the payer of a severance of the joint account.

(2.) This section applies only if and as far as a contrary intention is not expressed in the mortgage, or obligation, or transfer, and shall have effect subject to the terms of the mortgage, or obligation, or transfer, and to the provisions therein contained.

(3.) This section applies only to a mortgage, or obligation, or transfer made after the commencement of this Act.

Grants of easements, &c., by way of use.

62.—(1.) A conveyance of freehold land to the use that any person may have, for an estate or interest not exceeding in duration the estate conveyed in the land, any easement, right, liberty, or privilege in, or over, or with respect to that land, or any part thereof, shall operate to vest in possession in that person that easement, right, liberty, or privilege, for the estate or interest expressed to be limited to him; and he, and the persons deriving title under him, shall have, use, and enjoy the same accordingly.

(2.) This section applies only to conveyances made after the commencement of this Act.

Provision for all the estate, &c.

63.—(1.) Every conveyance shall, by virtue of this Act, be effectual to pass all the estate, right, title, interest, claim, and demand which the conveying parties respectively have, in, to, or on the property conveyed, or expressed or intended so to be, or which they respectively have power to convey in, to, or on the same.

(2.) This section applies only if and as far as a contrary intention is not expressed in the conveyance, and shall have effect subject to the terms of the conveyance and to the provisions therein contained.

(3.) This section applies only to conveyances made after the commencement of this Act.

64. In the construction of a covenant or proviso, or other provision, implied in a deed by virtue of this Act, words importing the singular or plural number, or the masculine gender, shall be read as also importing the plural or singular number, or as extending to females, as the case may require.

44 & 45 Vict. c. 41.
Construction of implied covenants.

XIII.—Long Terms.

LONG TERMS.

65.—(1.) Where a residue unexpired of not less than two hundred years of a term, which, as originally created, was for not less than three hundred years, is subsisting in land, whether being the whole land originally comprised in the term, or part only thereof, without any trust or right of redemption affecting the term in favour of the freeholder, or other person entitled in reversion expectant on the term, and without any rent, or with merely a peppercorn rent or other rent having no money value, incident to the reversion, or having had a rent, not being merely a peppercorn rent or other rent having no money value, originally so incident, which subsequently has been released, or has become barred by lapse of time, or has in any other way ceased to be payable, then the term may be enlarged into a fee simple in the manner, and subject to the restrictions, in this section provided.

Enlargement of residue of long term into fee simple.

(2.) Each of the following persons (namely):

(i.) Any person beneficially entitled in right of the term, whether subject to any incumbrance or not, to possession of any land comprised in the term; but, in case of a married woman, with the concurrence of her husband, unless she is entitled for her separate use, whether with restraint on anticipation or not, and then without his concurrence;

(ii.) Any person being in receipt of income as trustee, in right of the term, or having the term vested in him in trust for sale, whether subject to any incumbrance or not;

(iii.) Any person in whom, as personal representative of any deceased person, the term is vested, whether subject to any incumbrance or not;

shall, as far as regards the land to which he is entitled, or in which he is interested, in right of the term, in any such character

44 & 45 Vict. c. 41.

as aforesaid, have power by deed to declare to the effect that, from and after the execution of the deed, the term shall be enlarged into a fee simple.

(3.) Thereupon, by virtue of the deed and of this Act, the term shall become and be enlarged accordingly, and the person in whom the term was previously vested shall acquire and have in the land a fee simple instead of the term.

(4.) The estate in fee simple so acquired by enlargement shall be subject to all the same trusts, powers, executory limitations over, rights, and equities, and to all the same covenants and provisions relating to user and enjoyment, and to all the same obligations of every kind, as the term would have been subject to if it had not been so enlarged.

(5.) But where any land so held for the residue of a term has been settled in trust by reference to other land, being freehold land, so as to go along with that other land as far as the law permits, and, at the time of enlargement, the ultimate beneficial interest in the term, whether subject to any subsisting particular estate or not, has not become absolutely and indefeasibly vested in any person, then the estate in fee simple acquired as aforesaid shall, without prejudice to any conveyance for value previously made by a person having a contingent or defeasible interest in the term, be liable to be, and shall be, conveyed and settled in like manner as the other land, being freehold land, aforesaid, and until so conveyed and settled shall devolve beneficially as if it had been so conveyed and settled.

(6.) The estate in fee simple so acquired shall, whether the term was originally created without impeachment of waste or not, include the fee simple in all mines and minerals which at the time of enlargement have not been severed in right, or in fact, or have not been severed or reserved by an inclosure Act or award.

(7.) This section applies to every such term as aforesaid subsisting at or after the commencement of this Act.

ADOPTION OF ACT.

XIV.—Adoption of Act.

Protection of solicitor and trustees

66.—(1.) It is hereby declared that the powers given by this Act to any person, and the covenants, provisions, stipulations,

and words which under this Act are to be deemed included or implied in any instrument, or are by this Act made applicable to any contract for sale or other transaction, are and shall be deemed in law proper powers, covenants, provisions, stipulations, and words, to be given by or to be contained in any such instrument, or to be adopted in connexion with, or applied to, any such contract or transaction; and a solicitor shall not be deemed guilty of neglect or breach of duty, or become in any way liable, by reason of his omitting, in good faith, in any such instrument, or in connexion with any such contract or transaction, to negative the giving, inclusion, implication, or application of any of those powers, covenants, provisions, stipulations, or words, or to insert or apply any others in place thereof, in any case where the provisions of this Act would allow of his doing so. 44 & 45 Vict. c. 41. adopting Act.

(2.) But nothing in this Act shall be taken to imply that the insertion in any such instrument, or the adoption in connexion with, or the application to, any contract or transaction, of any further or other powers, covenants, provisions, stipulations, or words is improper.

(3.) Where the solicitor is acting for trustees, executors, or other persons in a fiduciary position, those persons shall also be protected in like manner.

(4.) Where such persons are acting without a solicitor, they shall also be protected in like manner.

XV.—Miscellaneous.

MISCELLANEOUS.

67.—(1.) Any notice required or authorized by this Act to be served shall be in writing. Regulations respecting notice.

(2.) Any notice required or authorized by this Act to be served on a lessee or mortgagor shall be sufficient, although only addressed to the lessee or mortgagor by that designation, without his name, or generally to the persons interested, without any name, and notwithstanding that any person to be affected by the notice is absent, under disability, unborn, or unascertained.

(3.) Any notice required or authorized by this Act to be served shall be sufficiently served if it is left at the last-known place of abode or business in the United Kingdom of the lessee,

44 & 45 Vict. c. 41.

lessor, mortgagee, mortgagor, or other person to be served, or, in case of a notice required or authorized to be served on a lessee or mortgagor, is affixed or left for him on the land or any house or building comprised in the lease or mortgage, or, in case of a mining lease, is left for the lessee at the office or counting-house of the mine.

(4.) Any notice required or authorized by this Act to be served shall also be sufficiently served, if it is sent by post in a registered letter addressed to the lessee, lessor, mortgagee, mortgagor, or other person to be served, by name, at the aforesaid place of abode or business, office, or counting-house, and if that letter is not returned through the post-office undelivered; and that service shall be deemed to be made at the time at which the registered letter would in the ordinary course be delivered.

(5.) This section does not apply to notices served in proceedings in the Court.

Short title of 5 & 6 Will. 4, c. 62.

68. The Act described in Part II. of the First Schedule to this Act shall, by virtue of this Act, have the short title of the Statutory Declarations Act, 1835, and may be cited by that short title in any declaration made for any purpose under or by virtue of that Act, or in any other document, or in any Act of Parliament.

XVI.—Court; Procedure; Orders.

Court; procedure; orders.

Regulations respecting payments into court and applications.

69.—(1.) All matters within the jurisdiction of the Court under this Act shall, subject to the Acts regulating the Court, be assigned to the Chancery Division of the Court.

(2.) Payment of money into Court shall effectually exonerate therefrom the person making the payment.

(3.) Every application to the Court shall, except where it is otherwise expressed, be by summons at Chambers.

(4.) On an application by a purchaser notice shall be served in the first instance on the vendor.

(5.) On an application by a vendor notice shall be served in the first instance on the purchaser.

(6.) On any application notice shall be served on such persons, if any, as the Court thinks fit.

(7.) The Court shall have full power and discretion to make such order as it thinks fit respecting the costs, charges, or expenses of all or any of the parties to any application. 44 & 45 Vict. c. 41.

(8.) General Rules for purposes of this Act shall be deemed Rules of Court within section seventeen of the Appellate Jurisdiction Act, 1876, and may be made accordingly. 39 & 40 Vict. c. 59, s. 17.

(9.) The powers of the Court may, as regards land in the County Palatine of Lancaster, be exercised also by the Court of Chancery of the County Palatine; and Rules for regulating proceedings in that Court shall be from time to time made by the Chancellor of the Duchy of Lancaster, with the advice and consent of a Judge of the High Court acting in the Chancery Division, and of the Vice-Chancellor of the County Palatine.

(10.) General Rules, and Rules of the Court of Chancery of the County Palatine, under this Act may be made at any time after the passing of this Act, to take effect on or after the commencement of this Act.

70.—(1.) An order of the Court under any statutory or other jurisdiction shall not, as against a purchaser, be invalidated on the ground of want of jurisdiction, or of want of any concurrence, consent, notice, or service, whether the purchaser has notice of any such want or not. Orders of Court conclusive.

(2.) This section shall have effect with respect to any lease, sale, or other act under the authority of the Court, and purporting to be in pursuance of the Settled Estates Act, 1877, notwithstanding the exception in section forty of that Act, or to be in pursuance of any former Act repealed by that Act, notwithstanding any exception in such former Act. 40 & 41 Vict. c. 18, s. 40.

(3.) This section applies to all orders made before or after the commencement of this Act, except any order which has before the commencement of this Act been set aside or determined to be invalid on any ground, and except any order as regards which an action or proceeding is at the commencement of this Act pending for having it set aside or determined to be invalid.

XVII.—Repeals.

REPEALS.

71.—(1.) The enactments described in Part III. of the Second Schedule to this Act are hereby repealed. Repeal of enactments in Part III.

44 & 45 Vict. c. 41. of second schedule; restriction on all repeals

(2.) The repeal by this Act of any enactment shall not affect the validity or invalidity, or any operation, effect, or consequence, of any instrument executed or made, or of anything done or suffered, before the commencement of this Act, or any action, proceeding, or thing then pending or uncompleted; and every such action, proceeding, and thing may be carried on and completed as if there had been no such repeal in this Act; but this provision shall not be construed as qualifying the provision of this Act relating to section forty of the Settled Estates Act, 1877, or any former Act repealed by that Act.

IRELAND.

XVIII.—Ireland.

Modifications respecting Ireland.

72.—(1.) In the application of this Act to Ireland the foregoing provisions shall be modified as in this section provided.

(2.) The Court shall be Her Majesty's High Court of Justice in Ireland.

(3.) All matters within the jurisdiction of that Court shall, subject to the Acts regulating that Court, be assigned to the Chancery Division of that Court; but General Rules under this Act may direct that any of those matters be assigned to the Land Judges of that Division.

(4.) The proper office of the Supreme Court of Judicature in Ireland shall be substituted for the central office of the Supreme Court of Judicature.

40 & 41 Vict. c. 57, s. 69.

(5.) General Rules for purposes of this Act for Ireland shall be deemed Rules of Court within the Supreme Court of Judicature Act (Ireland), 1877, and may be made accordingly, at any time after the passing of this Act, to take effect on or after the commencement of this Act.

Death of bare trustee intestate, &c., 37 & 38 Vict. c. 78.

73.—(1.) Section five of the Vendor and Purchaser Act, 1874, is hereby repealed from and after the commencement of this Act, as regards cases of death thereafter happening; and section seven of the Vendor and Purchaser Act, 1874, is hereby repealed as from the date at which it came into operation.

(2.) This section extends to Ireland only.

SCHEDULES.

44 & 45 Vict. c. 41.

THE FIRST SCHEDULE (*a*).

Acts affected.

Part I.

1 & 2 Vict. c. 110.—An Act for abolishing arrest on mesne process in civil actions, except in certain cases; for extending the remedies of creditors against the property of debtors; and for amending the laws for the relief of insolvent debtors in England.

2 & 3 Vict. c. 11.—An Act for the better protection of purchasers against judgments, Crown debts, lis pendens, and fiats in bankruptcy.

18 & 19 Vict. c. 15.—An Act for the better protection of purchasers against judgments, Crown debts, cases of lis pendens, and life annuities or rent-charges.

22 & 23 Vict. c. 35.—An Act to further amend the law of property and to relieve trustees.

23 & 24 Vict. c. 38.—An Act to further amend the law of property.

23 & 24 Vict. c. 115.—An Act to simplify and amend the practice as to the entry of satisfaction on Crown debts and on judgments.

27 & 28 Vict. c. 112.—An Act to amend the law relating to future judgments, statutes, and recognizances.

28 & 29 Vict. c. 104.—The Crown Suits, &c. Act, 1865.

31 & 32 Vict. c. 54.—The Judgments Extension Act, 1868.

Part II.

5 & 6 Will. 4, c. 62.—An Act to repeal an Act of the present session of Parliament, intituled "An Act for the more effectual abolition of oaths and affirmations taken and made in various Departments of the State, and to substitute declarations in lieu thereof; and for the more entire suppression of voluntary and extra-judicial oaths and affidavits;" and to make other provisions for the abolition of unnecessary oaths.

(*a*) There is no reference to this first Schedule in the body of the Act, nor are there any provisions which affect the scheduled Acts.

44 & 45 Vict. c. 41.

THE SECOND SCHEDULE.

Repeals.

A description or citation of a portion of an Act is inclusive of the words, section, or other part, first or last mentioned, or otherwise referred to as forming the beginning, or as forming the end, of the portion comprised in the description or citation.

Part I.

22 & 23 Vict. c. 35, in part.	An Act to further amend the law of property and to relieve trustees . . . . . Sections four to nine.	in part; namely—
23 & 24 Vict. c. 126, in part.	The Common Law Procedure Act, 1860 . . . . . Section two.	in part; namely—

Part II.

15 & 16 Vict. c. 86, in part.	An Act to amend the practice and course of proceeding in the High Court of Chancery . . Section forty-eight.	in part; namely—

Part III.

8 & 9 Vict. c. 119.	An Act to facilitate the conveyance of real property.	
23 & 24 Vict. c. 145, in part.	An Act to give to trustees, mortgagees, and others certain powers now commonly inserted in settlements, mortgages, and wills . . . . . Parts II. and III. (sections eleven to thirty).	in part; namely—

THE THIRD SCHEDULE.

Statutory Mortgage.

Part I.

Deed of Statutory Mortgage.

This Indenture made by way of statutory mortgage the day of 1882 between *A.* of [*&c.*], of the one part, and *M.* of [*&c.*], of the other part. Witnesseth, that in consideration of the sum of £ now paid to *A.* by *M.*, of which sum *A.* hereby acknowledges the receipt, *A.*, as mortgagor and as beneficial owner, hereby conveys to *M.*

All that [*&c.*], To hold to and to the use of *M.* in fee simple for securing payment on the day of 1883 of the principal sum of £ as the mortgage money, with interest thereon at the rate of [*four*] per centum per annum. 44 & 45 Vict. c. 41.

In witness, &c.

*** *Variations in this and subsequent forms to be made, if required, for leasehold land, or other matter.*

PART II.

(A.)

Deed of Statutory Transfer, Mortgagor not joining.

THIS INDENTURE made by way of statutory transfer of mortgage the day of 1883 between *M.* of [*&c.*], of the one part, and *T.* of [*&c.*], of the other part, supplemental to an indenture made by way of statutory mortgage dated the day of 1882, and made between [*&c.*], WITNESSETH, that in consideration of the sum of £ now paid to *M.* by *T.*, being the aggregate amount of £ mortgage money and £ interest due in respect of the said mortgage, of which sum *M.* hereby acknowledges the receipt, *M.*, as mortgagee, hereby conveys and transfers to *T.* the benefit of the said mortgage.

In witness, &c.

(B.)

Deed of Statutory Transfer, a Covenantor joining.

THIS INDENTURE made by way of statutory transfer of mortgage the day of 1883, between *A.* of [*&c.*], of the first part, *B.* of [*&c.*], of the second part, and *C.* of [*&c.*], of the third part, supplemental to an indenture made by way of statutory mortgage dated the day of 1882, and made between [*&c.*], WITNESSETH, that in consideration of the sum of £ now paid to *A.* by *C.*, being the mortgage money due in respect of the said mortgage, no interest being now due and payable thereon, of which sum *A.* hereby acknowledges the receipt, *A.*, as mortgagee, with the concurrence of *B.*, who joins herein as covenantor, hereby conveys and transfers to *C.* the benefit of the said mortgage.

In witness, &c.

(C.)

Statutory Transfer and Statutory Mortgage combined.

THIS INDENTURE made by way of statutory transfer of mortgage and statutory mortgage the day of 1883, between *A.* of [*&c.*], of the first part, *B.* of [*&c.*], of the second part, and *C.* of [*&c.*], of the third part, supplemental to an indenture made by way of statutory mortgage dated the day of 1882, and made between

44 & 45 Vict. c. 41.

[*&c.*]: Whereas the principal sum of £ only remains due in respect of the said mortgage, as the mortgage money and no interest is now due and payable thereon: And whereas *B.* is seised in fee simple of the land comprised in the said mortgage subject to that mortgage. Now this Indenture witnesseth, that in consideration of the sum of £ now paid to *A.* by *C.*, of which sum *A.* hereby acknowledges the receipt, and *B.* hereby acknowledges the payment and receipt as aforesaid,* *A.*, as mortgagee, hereby conveys and transfers to *C.* the benefit of the said mortgage: And this Indenture also witnesseth, that for the same consideration *A.*, as mortgagee and according to his estate, and by direction of *B.*, hereby conveys, and *B.*, as beneficial owner, hereby conveys and confirms to *C.*, All that [*&c.*], To hold to and to the use of *C.* in fee simple for securing payment on the day of 1882, of † the sum of £ as the mortgage money, with interest thereon at the rate of [*four*] per centum per annum.

In witness, &c.

[Or, *in case of further advance, after* aforesaid *at* * *insert* and also in consideration of the further sum of £ now paid by *C.* to *B.*, of which sum *B.* hereby acknowledges the receipt, *and after* of *at* † *insert* the sums of £ and £ , making together]

*** *Variations to be made, as required, in case of the deed being made by indorsement, or in respect of any other thing.*

Part III.

Deed of Statutory Re-conveyance of Mortgage.

This Indenture made by way of statutory re-conveyance of mortgage the day of 1884, between *C.* of [*&c.*], of the one part, and *B.* of [*&c.*], of the other part, supplemental to an indenture made by way of statutory transfer of mortgage dated the day of 1883, and made between [*&c.*], Witnesseth, that in consideration of all principal money and interest due under that indenture having been paid, of which principal and interest *C.* hereby acknowledges the receipt, *C.*, as mortgagee, hereby conveys to *B.* all the lands and hereditaments now vested in *C.* under the said indenture, To hold and to the use of *B.* in fee simple, discharged from all principal money and interest secured by and from all claims and demands under the said indenture.

In witness, &c.

*** *Variations as noted above.*

THE FOURTH SCHEDULE.

44 & 45 Vict. c. 41.

Short Forms of Deeds.

I.—*Mortgage.*

This Indenture of Mortgage made the day of 1882, between *A.* of [*&c.*], of the one part, and *B.* of [*&c.*], and *C.* of [*&c.*], of the other part, Witnesseth, that in consideration of the sum of £ paid to *A.* by *B.* and *C.* out of money belonging to them on a joint account, of which sum *A.* hereby acknowledges the receipt, *A.* hereby covenants with *B.* and *C.* to pay to them on the day of 1882, the sum of £ with interest thereon in the meantime at the rate of [*four*] per centum per annum, and also as long after that day as any principal money remains due under this mortgage, to pay to *B.* and *C.* interest thereon at the same rate by equal half-yearly payments on the day of and the day of

And this Indenture also witnesseth, that for the same consideration *A.*, as beneficial owner, hereby conveys to *B.* and *C.* All that [*&c.*], To hold to and to the use of *B.* and *C.* in fee simple, subject to the proviso for redemption following (namely), that if *A.* or any person claiming under him shall, on the day of 1882, pay to *B.* and *C.* the sum of £ and interest thereon at the rate aforesaid, then *B.* and *C.*, or the persons claiming under them, will, at the request and cost of *A.*, or the persons claiming under him, re-convey the premises to *A.*, or the persons claiming under him: And *A.* hereby covenants with *B.* as follows [*here add covenant as to fire insurance or other special covenant required*].

In witness, &c.

II.—*Further Charge.*

This Indenture made the day of 18 , between [*the same parties as the foregoing mortgage*] and supplemental to an indenture of mortgage dated the day of 18 , and made between the same parties for securing the sum of £ and interest at [*four*] per centum per annum on property at [*&c.*], Witnesseth, that in consideration of the further sum of £ paid to *A.* by *B.* and *C.* out of money belonging to them on a joint account [*add receipt and covenant as in the foregoing mortgage*], and further that all the property comprised in the before-mentioned indenture of mortgage shall stand charged with the payment to *B.* and *C.* of the sum of £ and the interest thereon hereinbefore covenanted to be paid, as well as the sum of £ and interest secured by the same indenture.

In witness, &c.

III.—*Conveyance on Sale.*

This Indenture made the day of 1883, between *A.* of [*&c.*], of the first part, *B.* of [*&c.*], and *C.* of [*&c.*], of the second part, and *M.* of [*&c.*], of the third part; Whereas by an indenture dated [*&c.*] and made between [*&c.*], the lands hereinafter mentioned were conveyed by *A.* to *B.* and *C.* in fee simple, by way of mortgage for securing £ and interest, and by a supplemental indenture dated [*&c.*], and made

44 & 45 Vict. c. 41.

between the same parties those lands were charged by *A.* with the payment to *B.* and *C.* of the further sum of £ and interest thereon: And whereas a principal sum of £ remains due under the two before-mentioned indentures, but all interest thereon has been paid, as *B.* and *C.* hereby acknowledge: Now this Indenture witnesseth, that in consideration of the sum of £ paid by the direction of *A.* to *B.* and *C.*, and of the sum of £ paid to *A.*, those two sums making together the total sum of £ paid by *M.* for the purchase of the fee simple of the lands hereinafter mentioned, of which sum of £ *B.* and *C.* hereby acknowledge the receipt, and of which total sum of £ *A.* hereby acknowledges the payment and receipt in manner before-mentioned, *B.* and C., as mortgagees, and by the direction of *A.* as beneficial owner, hereby convey, and *A.*, as beneficial owner, hereby conveys and confirms to *M.*, All that [*&c.*], To hold to and to the use of *M.* in fee simple, discharged from all money secured by and from all claims under the before-mentioned indentures. [*Add, if required*, And *A.* hereby acknowledges the right of *M.* to production of the documents of title mentioned in the Schedule hereto, and to delivery of copies thereof, and hereby undertakes for the safe custody thereof.]

In witness, &c.

[The Schedule above referred to.
To contain list of documents retained by A.]

IV.—*Marriage Settlement.*

This Indenture made the day of 1882, between *John M.* of [*&c.*], of the first part, *Jane S.* of [*&c.*], of the second part, and *X.* of [*&c.*] and *Y.* of [*&c.*], of the third part, witnesseth that in consideration of the intended marriage between *John M.* and *Jane S. John M.* as settlor hereby conveys to *X.* and *Y.* All that [*&c.*], To hold to *X.* and *Y.* in fee simple, to the use of *John M.* in fee simple, until the marriage and after the marriage to the use of *John M.* during his life without impeachment of waste, with remainder after his death, to the use that *Jane S.* if she survives him may receive during the rest of her life a yearly jointure rentcharge of £ , to commence from his death and to be paid by equal half-yearly payments, the first thereof to be made at the end of six calendar months from his death if she is then living, or, if not, a proportional part to be paid at her death and subject to the before-mentioned rentcharge to the use of *X.* and *Y.* for a term of five hundred years, without impeachment of waste, on the trusts herein-after declared, and subject thereto to the use of the first and other sons of *John M.* and *Jane S.* successively according to seniority in tail male with remainder [*insert here, if thought desirable*, to the use of the same first and other sons successively according to seniority in tail with remainder] to the use of all the daughters of *John M.* and *Jane S.* in equal shares as tenants in common in tail with cross remainders between them in tail with remainder to the use of *John M.* in fee simple. [*Insert trusts of term of* 500 *years for raising portions; also, if required, power to charge jointure and portions on a future marriage; also powers of sale, exchange, and partition, and other powers and provisions, if and as desired.*]

In witness, &c.

CONVEYANCING ACT, 1882.

45 & 46 Vict. c. 39.

An Act for further improving the Practice of Conveyancing; and for other purposes. [10th August, 1882.] 45 & 46 Vict c. 39.

Be it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

Preliminary.

Preliminary.

1.—(1.) This Act may be cited as the Conveyancing Act, 1882; and the Conveyancing and Law of Property Act, 1881 (in this Act referred to as the Conveyancing Act of 1881) and this Act may be cited together as the Conveyancing Acts, 1881, 1882. Short titles; commencement; extent; interpretation. 44 & 45 Vict. c. 41.

(2.) This Act, except where it is otherwise expressed, shall commence and take effect from and immediately after the thirty-first day of December, one thousand eight hundred and eighty-two, which time is in this Act referred to as the commencement of this Act.

(3.) This Act does not extend to Scotland.

(4.) In this Act and in the Schedule thereto—

(i.) Property includes real and personal property, and any debt, and any thing in action, and any other right or interest in the nature of property, whether in possession or not:

(ii.) Purchaser includes a lessee or mortgagee, or an intending purchaser, lessee, or mortgagee, or other person, who, for valuable consideration, takes or deals for property, and purchase has a meaning corresponding with that of purchaser:

(iii.) The Act of the session of the third and fourth years of 3 & 4 Will. 4, c. 74.

45 & 46 Vict. c. 39.

Preliminary.

4 & 5 Will. 4, c. 92.

King William the Fourth (chapter seventy-four) "for the abolition of Fines and Recoveries, and for the substitution of more simple modes of Assurance" is referred to as the Fines and Recoveries Act; and the Act of the session of the fourth and fifth years of King William the Fourth (chapter ninety-two) "for the abolition of Fines and Recoveries, and for the substitution of more simple modes of Assurance in Ireland" is referred to as the Fines and Recoveries (Ireland) Act.

Searches.

Searches.

Official negative and other certificates of searches for judgments, crown debts, &c.

2.—(1.) Where any person requires, for purposes of this section, search to be made in the Central Office of the Supreme Court of Judicature for entries of judgments, deeds, or other matters or documents, whereof entries are required or allowed to be made in that office by any Act described in Part I. of the First Schedule to the Conveyancing Act of 1881, or by any other Act, he may deliver in the office a requisition in that behalf, referring to this section.

(2.) Thereupon the proper officer shall diligently make the search required, and shall make and file in the office a certificate setting forth the result thereof; and office copies of that certificate shall be issued on requisition, and an office copy shall be evidence of the certificate.

(3.) In favour of a purchaser, as against persons interested under or in respect of judgments, deeds, or other matters or documents, whereof entries are required or allowed as aforesaid, the certificate, according to the tenour thereof, shall be conclusive, affirmatively or negatively, as the case may be.

(4.) Every requisition under this section shall be in writing, signed by the person making the same, specifying the name against which he desires search to be made, or in relation to which he requires an office copy certificate of result of search, and other sufficient particulars; and the person making any such requisition shall not be entitled to a search, or an office copy certificate, until he has satisfied the proper officer that the same is required for the purposes of this section.

(5.) General Rules shall be made for purposes of this section, prescribing forms and contents of requisitions and certificates, and regulating the practice of the office, and prescribing, with

the concurrence of the Commissioners of Her Majesty's Treasury, the fees to be taken therein; which Rules shall be deemed Rules of Court within section seventeen of the Appellate Jurisdiction Act, 1876, as altered by section nineteen of the Supreme Court of Judicature Act, 1881, and may be made, at any time after the passing of this Act, to take effect on or after the commencement of this Act. 45 & 46 Vict. c. 39. *Searches.* 39 & 40 Vict. c. 59. 44 & 45 Vict. c. 68.

(6.) If any officer, clerk, or person employed in the office commits, or is party or privy to, any act of fraud or collusion, or is wilfully negligent, in the making of or otherwise in relation to any certificate or office copy under this section, he shall be guilty of a misdemeanour.

(7.) Nothing in this section or in any Rule made thereunder shall take away, abridge, or prejudicially affect any right which any person may have independently of this section to make any search in the office; and every such search may be made as if this section or any such Rule had not been enacted or made.

(8.) Where a solicitor obtains an office copy certificate of result of search under this section, he shall not be answerable in respect of any loss that may arise from error in the certificate.

(9.) Where the solicitor is acting for trustees, executors, agents, or other persons in a fiduciary position, those persons also shall not be so answerable.

(10.) Where such persons obtain such an office copy without a solicitor, they shall also be protected in like manner.

(11.) Nothing in this section applies to deeds inrolled under the Fines and Recoveries Act, or under any other Act, or under any statutory Rule. & 4 Will. 4, 74

(12.) This section does not extend to Ireland.

Notice.

Notice.

3.—(1). A purchaser shall not be prejudicially affected by notice of any instrument, fact, or thing, unless— Restriction on constructive notice.

(i.) It is within his own knowledge, or would have come to his knowledge if such inquiries and inspections had been made as ought reasonably to have been made by him: or

(ii.) In the same transaction with respect to which a question of notice to the purchaser arises, it has come to the knowledge of his counsel, as such, or of his solicitor, or other agent, as such,

45 & 46 Vict. c. 39.
Notice.

or would have come to the knowledge of his solicitor, or other agent, as such, if such inquiries and inspections had been made as ought reasonably to have been made by the solicitor or other agent.

(2.) This section shall not exempt a purchaser from any liability under, or any obligation to perform or observe, any covenant, condition, provision, or restriction contained in any instrument under which his title is derived, mediately or immediately; and such liability or obligation may be enforced in the same manner and to the same extent as if this section had not been enacted.

(3.) A purchaser shall not by reason of anything in this section be affected by notice in any case where he would not have been so affected if this section had not been enacted.

(4.) This section applies to purchases made either before or after the commencement of this Act; save that, where an action is pending at the commencement of this Act, the rights of the parties shall not be affected by this section.

Leases.

Leases.

Contract for lease not part of title to lease.

4.—(1.) Where a lease is made under a power contained in a settlement, will, Act of Parliament, or other instrument, any preliminary contract for or relating to the lease shall not, for the purpose of the deduction of title to an intended assign, form part of the title, or evidence of the title, to the lease.

(2.) This section applies to leases made either before or after the commencement of this Act.

Separate Trustees.

Separate Trustees.

Appointment of separate sets of trustees.

5.—(1.) On an appointment of new trustees, a separate set of trustees may be appointed for any part of the trust property held on trusts distinct from those relating to any other part or parts of the trust property; or, if only one trustee was originally appointed, then one separate trustee may be so appointed for the first-mentioned part.

(2.) This section applies to trusts created either before or after the commencement of this Act.

Powers.

45 & 46 Vict. c. 39.

Powers.

Disclaimer of power by trustees.

6.—(1.) A person to whom any power, whether coupled with an interest or not, is given, may, by deed, disclaim the power; and, after disclaimer, shall not be capable of exercising or joining in the exercise of the power.

(2.) On such disclaimer, the power may be exercised by the other or others, or the survivors or survivor of the others, of the persons to whom the power is given, unless the contrary is expressed in the instrument creating the power.

(3.) This section applies to powers created by instruments coming into operation either before or after the commencement of this Act.

Married Women.

Married Women.

Acknowledgment of deeds by married women.

7.—(1.) In section seventy-nine of the Fines and Recoveries Act, and section seventy of the Fines and Recoveries (Ireland) Act, there shall, by virtue of this Act, be substituted for the words "two of the perpetual commissioners, or two special commissioners," the words "one of the perpetual commissioners, or one special commissioner;" and in section eighty-three of the Fines and Recoveries Act, and section seventy-four of the Fines and Recoveries (Ireland) Act, there shall, by virtue of this Act, be substituted for the word "persons" the word "person," and for the word "commissioners" the words "a commissioner;" and all other provisions of those Acts, and all other enactments having reference in any manner to the sections aforesaid, shall be read and have effect accordingly.

(2.) Where the memorandum of acknowledgment by a married woman of a deed purports to be signed by a person authorized to take the acknowledgment, the deed shall, as regards the execution thereof by the married woman, take effect at the time of acknowledgment, and shall be conclusively taken to have been duly acknowledged.

(3.) A deed acknowledged before or after the commencement of this Act by a married woman, before a judge of the High Court of Justice in England or Ireland, or before a judge of a county court in England, or before a chairman in Ireland, or

45 & 46 Vict. c. 39. *Married Women.*

before a perpetual commissioner or a special commissioner, shall not be impeached or impeachable by reason only that such judge, chairman, or commissioner was interested or concerned either as a party, or as solicitor, or clerk to the solicitor for one of the parties, or otherwise, in the transaction giving occasion for the acknowledgment; and General Rules shall be made for preventing any person interested or concerned as aforesaid from taking an acknowledgment: but no such Rule shall make invalid any acknowledgment; and those Rules shall, as regards England, be deemed Rules of Court within section seventeen of the Appellate Jurisdiction Act, 1876, as altered by section nineteen of the Supreme Court of Judicature Act, 1881, and shall, as regards Ireland, be deemed Rules of Court within the Supreme Court of Judicature Act (Ireland), 1877, and may be made accordingly, for England and Ireland respectively, at any time after the passing of this Act, to take effect on or after the commencement of this Act.

39 & 40 Vict. c. 59. 44 & 45 Vict. c. 68. 40 & 41 Vict. c. 57.

(4.) The enactments described in the Schedule to this Act are hereby repealed.

(5.) The foregoing provisions of this section, including the repeal therein, apply only to the execution of deeds by married women after the commencement of this Act.

(6.) Notwithstanding the repeal or any other thing in this section, the certificate, if not lodged before the commencement of this Act, of the taking of an acknowledgment by a married woman of a deed executed before the commencement of this Act, with any affidavit relating thereto, shall be lodged, examined, and filed in the like manner and with the like effects and consequences as if this section had not been enacted.

(7.) There shall continue to be kept in the proper office of the Supreme Court of Judicature an index to all certificates of acknowledgments of deeds by married women lodged therein, before or after the commencement of this Act, containing the names of the married women and their husbands, alphabetically arranged, and the dates of the certificates and of the deeds to which they respectively relate, and other particulars found convenient; and every such certificate lodged after the commencement of this Act shall be entered in the index as soon as may be after the certificate is filed.

(8.) An office copy of any such certificate filed before or after

the commencement of this Act shall be delivered to any person applying for the same; and every such office copy shall be received as evidence of the acknowledgment of the deed to which the certificate refers.

45 & 46 Vict. c. 39. — *Married Women.*

Powers of Attorney.

Powers of Attorney.

Effect of power of attorney, for value, made absolutely irrevocable.

8.—(1.) If a power of attorney, given for valuable consideration, is in the instrument creating the power expressed to be irrevocable, then, in favour of a purchaser—

(i.) The power shall not be revoked at any time, either by anything done by the donor of the power without the concurrence of the donee of the power, or by the death, marriage, lunacy, unsoundness of mind, or bankruptcy of the donor of the power: and

(ii.) Any act done at any time by the donee of the power, in pursuance of the power, shall be as valid as if anything done by the donor of the power without the concurrence of the donee of the power, or the death, marriage, lunacy, unsoundness of mind, or bankruptcy of the donor of the power, had not been done or happened: and

(iii.) Neither the donee of the power nor the purchaser shall at any time be prejudicially affected by notice of anything done by the donor of the power, without the concurrence of the donee of the power, or of the death, marriage, lunacy, unsoundness of mind, or bankruptcy of the donor of the power.

(2.) This section applies only to powers of attorney created by instruments executed after the commencement of this Act.

Effect of power of attorney, for value or not, made irrevocable for fixed time.

9.—(1.) If a power of attorney, whether given for valuable consideration or not, is in the instrument creating the power expressed to be irrevocable for a fixed time therein specified, not exceeding one year from the date of the instrument, then, in favour of a purchaser—

(i.) The power shall not be revoked, for and during that fixed time, either by anything done by the donor of the power without the concurrence of the donee of the power, or by the death, marriage, lunacy, unsoundness of mind, or bankruptcy of the donor of the power: and

(ii.) Any act done within that fixed time, by the donee of the power, in pursuance of the power, shall be as valid as if any-

45 & 46 Vict. c. 39.

Powers of Attorney.

thing done by the donor of the power without the concurrence of the donee of the power, or the death, marriage, lunacy, unsoundness of mind, or bankruptcy of the donor of the power, had not been done or happened: and

(iii.) Neither the donee of the power, nor the purchaser, shall at any time be prejudicially affected by notice either during or after that fixed time of anything done by the donor of the power during that fixed time, without the concurrence of the donee of the power, or of the death, marriage, lunacy, unsoundness of mind, or bankruptcy of the donor of the power within that fixed time.

(2.) This section applies only to powers of attorney created by instruments executed after the commencement of this Act.

Executory Limitations.

Executory Limitations.

Restriction on executory limitations.

10.—(1.) Where there is a person entitled to land for an estate in fee, or for a term of years absolute or determinable on life, or for term of life, with an executory limitation over on default or failure of all or any of his issue, whether within or at any specified period of time or not, that executory limitation shall be or become void and incapable of taking effect, if and as soon as there is living any issue who has attained the age of twenty-one years, of the class on default or failure whereof the limitation over was to take effect.

(2.) This section applies only where the executory limitation is contained in an instrument coming into operation after the commencement of this Act.

Long Terms.

Long Terms.

Amendment of enactment respecting long terms.

11. Section sixty-five of the Conveyancing Act of 1881 shall apply to and include, and shall be deemed to have always applied to and included, every such term as in that section mentioned, whether having as the immediate reversion thereon the freehold or not: but not—

(i.) Any term liable to be determined by re-entry for condition broken; or

(ii.) Any term created by sub-demise out of a superior term, itself incapable of being enlarged into a fee simple.

Mortgages.

45 & 46 Vict c. 39.

Mortgages.

Reconveyance on mortgage

12. The right of the mortgagor, under section fifteen of the Conveyancing Act of 1881, to require a mortgagee, instead of re-conveying, to assign the mortgage debt and convey the mortgaged property to a third person, shall belong to and be capable of being enforced by each incumbrancer, or by the mortgagor, notwithstanding any intermediate incumbrance; but a requisition of an incumbrancer shall prevail over a requisition of the mortgagor, and, as between incumbrancers, a requisition of a prior incumbrancer shall prevail over a requisition of a subsequent incumbrancer.

Saving.

Saving.

Restriction on repeals in this Act.

13. The repeal by this Act of any enactment shall not affect any right accrued or obligation incurred thereunder before the commencement of this Act; nor shall the same affect the validity or invalidity, or any operation, effect, or consequence, of any instrument executed or made, or of anything done or suffered, before the commencement of this Act; nor shall the same affect any action, proceeding, or thing then pending or uncompleted; and every such action, proceeding, and thing may be carried on and completed as if there had been no such repeal in this Act.

SCHEDULE.

REPEALS.

3 & 4 Will. 4, c. 74, in part.	The Fines and Recoveries Act, in part; namely— Section eighty-four, from and including the words "and the same judge," to the end of that section. Sections eighty-five to eighty-eight, inclusive.
4 & 5 Will. 4, c. 92, in part.	The Fines and Recoveries (Ireland) Act . . . . . } in part; namely— Section seventy-five, from and including the words "and the same judge," to the end of that section. Sections seventy-six to seventy-nine, inclusive.
17 & 18 Vict. c. 75.	An Act to remove doubts concerning the due acknowledgments of deeds by married women in certain cases.
41 & 42 Vict. c. 23.	The Acknowledgment of Deeds by Married Women (Ireland) Act, 1878.

RULES UNDER SECTION 2 OF THE CONVEYANCING ACT, 1882.

1. Every requisition for an official search shall state the name and address of the person requiring the search to be made. Every requisition and certificate shall be filed in the office where the search was made.

2. Every person requiring an official search to be made pursuant to section 2 of the Conveyancing Act, 1882, shall deliver to the officer a declaration according to the Forms I. and II. in the Appendix, purporting to be signed by the person requiring the search to be made, or by a solicitor, which declaration may be accepted by the officer as sufficient evidence that the search is required for the purposes of the said section. The declaration may be made in the requisition, or in a separate document.

3. Requisitions for searches under section 2 of the Conveyancing Act, 1882, shall be in the Forms III. to VI. in the Appendix, and the certificates of the results of such searches shall be in the Forms VII. to X., with such modifications as the circumstances may require.

4. Where a certificate setting forth the result of a search in any name has been issued, and it is desired that the search be continued in that name, to a date not more than one calendar month subsequent to the date of the certificate, a requisition in writing in the Form XI. in the Appendix may be left with the proper officer, who shall cause the search to be continued, and the result of the continued search shall be endorsed on the original certificate and upon any office copy thereof which may have been issued, if produced to the officer for that purpose. The endorsement shall be in the Form XII. in the Appendix with such modifications as circumstances require.

5. Every person shall upon payment of the prescribed fee be entitled to have a copy of the whole or any part of any deed or document enrolled in the Enrolment Department of the Central Office.

APPENDIX TO THE RULES.

FORM I.

DECLARATION BY SEPARATE INSTRUMENT AS TO PURPOSES OF SEARCH.

Supreme Court of Judicature,
Central Office.

To the Clerk of Enrolments
or The Registrar of
Royal Courts of Justice,
London.

In the matter of *A.B.* and *C.D.*

I declare that the search (*or* searches) in the name (*or* names) of required to be made by the requisition for search, dated the is (*or* are) required for the purposes of a sale (*or* mortgage, *or* lease, *or as the case may be*), by *A.B.* to *C.D.*

Signature,
Address, and
Description.

Dated .

FORM II.

DECLARATION AS TO PURPOSES OF SEARCH CONTAINED IN THE REQUISITION.

I declare that the above-mentioned search is required for the purposes of a sale (*or* mortgage, *or* lease, *or as the case may be*), by *A.B.* to *C.D.*

FORM III.

REQUISITION FOR SEARCH IN THE ENROLMENT OFFICE, UNDER THE CONVEYANCING ACT, 1882, s. 2.

Supreme Court of Judicature,
Central Office.

Requisition for Search.

To the Clerk of Enrolments,
Royal Courts of Justice,
London.

In the matter of *A.B.* and *C.D.*

Pursuant to section 2 of the Conveyancing Act, 1882, search for deeds and other documents enrolled during the period from 18 to 18 both inclusive, in the following name (*or* names).

Surname.	Christian Name or Names.	Usual or last known Place of Abode.	Title, Trade, or Profession.

(*Add declaration, Form II.*)

(*State if an office copy of the certificate is desired, and whether it is to be sent by post or called for.*)

Signature, address, and description of person requiring the search.

Dated

FORM IV.

REQUISITION FOR SEARCH IN THE BILLS OF SALE DEPARTMENT UNDER THE CONVEYANCING ACT, 1882, S. 2.

Supreme Court of Judicature,
Central Office.

Requisition for Search.

To the Registrar of Bills of Sale,
Royal Courts of Justice,
London.

In the matter of *A.B.* and *C.D.*

Pursuant to section 2 of the Conveyancing Act, 1882, search for instruments registered or re-registered as bills of sale during the period from 18 to 18 both inclusive in the following name (*or* names).

Surname.	Christian Name or Names.	Usual or last known Place of Abode.	Title, Trade, or Profession.

(*Add declaration, Form II.*)

(*State if an office copy of the certificate is desired, and whether it is to be sent by post or called for.*)

Signature, address, and description of person requiring the search.

Dated .

FORM V.

REQUISITION FOR SEARCH IN THE REGISTRY OF CERTIFICATES OF ACKNOWLEDGMENTS OF DEEDS BY MARRIED WOMEN UNDER THE CONVEYANCING ACT, 1882, s. 2.

Supreme Court of Judicature,
Central Office.

Requisition for Search.

To the Registrar of Certificates of Acknowledgments of Deeds by Married Women,
Royal Courts of Justice,
London.

In the matter of *A.B.* and *C.D.*

Pursuant to section 2 of the Conveyancing Act, 1882, search for Certificates of Acknowledgments of Deeds by Married Women during the period from 18 to 18 both inclusive, according to the particulars mentioned in the schedule hereto.

THE SCHEDULE.

Surname.	Christian Name or Names of Wife and Husband.	Date of Certificate if the Search relates to a Particular Certificate.	Date of Deed, if the Search relates to a Particular Deed.	County, Parish, or Place in which the Property is situate, or other description of the Property.

(*Add declaration, Form II.*)

(*State if an office copy of the certificate is desired, and whether it is to be sent by post or called for.*)

Signature, address, and description of person requiring the search.

Dated

FORM VI.

REQUISITION FOR SEARCH IN THE REGISTRY OF JUDGMENTS UNDER THE CONVEYANCING ACT, 1882, s. 2.

Supreme Court of Judicature,
Central Office.

Requisition for Search.

To the Registrar of Judgments,
Royal Courts of Justice,
London.

In the matter of *A.B.* and *C.D.*

Pursuant to section 2 of the Conveyancing Act, 1882, search for judgments, revivals, decrees, orders, rules, and lis pendens, and for judgments at the suit of the Crown, statutes, recognizances, Crown bonds, inquisitions, and acceptances of office for the period from 18 to 18 , both inclusive and for executions for the period from the 29th July, 1864 (*or as the case may require*) to the 18 , both inclusive, and for annuities for the period from the 26th April, 1855 (*or as the case may require*) to the 18 , both inclusive in the following name (*or* names).

Surname.	Christian Name or Names.	Usual or last known Place of Abode.	Title, Trade, or Profession.

(*Add Declaration, Form II.*)

(*State if an office copy of the certificate is desired, and whether it is to be sent by post or called for.*)

Signature, address, and description of person requiring the search.

Dated

FORM VII.

CERTIFICATE OF SEARCH BY ENROLMENT DEPARTMENT UNDER THE CONVEYANCING ACT, 1882, s. 2.

Supreme Court of Judicature,
Central Office,
Enrolment Department.

Certificate of Search pursuant to Section 2 of the Conveyancing Act, 1882.

In the Matter of *A.B.* and *C.D.*

This is to certify that a search has been diligently made in the Enrolment Office for deeds and other documents in the name (*or* names) of for the period from to , both inclusive, and that no deed or other document has been enrolled in the said office in that name (*or* in any one or more of those names) during the period aforesaid.

or and that except the described in the schedule hereto no deed or document has been enrolled in that name (*or* in any one or more of those names) during the period aforesaid.

THE SCHEDULE.

Dated

FORM VIII.

CERTIFICATE OF SEARCH BY THE REGISTRAR OF BILLS OF SALE UNDER THE CONVEYANCING ACT, 1882.

Supreme Court of Judicature,
Central Office,
Bills of Sale Department.

Certificate of Search pursuant to Section 2 of the Conveyancing Act, 1882.

In the matter of *A.B.* and *C.D.*

This is to certify that a search has been diligently made in the Register of Bills of Sale in the name (*or* names) of for the period from 18 to 18 both inclusive, and that no instrument has been registered or re-registered as a bill of sale in that name (*or* in any one or more of those names) during that period.

or, and that except the described in the schedule hereto, no instrument has been registered or re-registered as a bill of sale in that name (*or* in any one or more of those names) during the period aforesaid.

THE SCHEDULE.

Dated

FORM IX.

CERTIFICATE OF SEARCH BY REGISTRAR OF CERTIFICATES OF ACKNOWLEDGMENTS OF DEEDS BY MARRIED WOMEN UNDER THE CONVEYANCING ACT, 1882, s. 2.

Supreme Court of Judicature,
Central Office.

Registry of Certificates of Acknowledgments of Deeds by Married Women.

Certificate of Search pursuant to Section 2 of the Conveyancing Act, 1882.

In the matter of *A.B.* and *C.D.*

This is to certify that a search has been diligently made in the Office of the Registrar of Certificates of Acknowledgments of Deeds by Married Women in the name (*or* names) of for the period from to 18 , both inclusive,
for a certificate dated the *or* for certificates of acknowledgment of a deed dated the

or for certificates of acknowledgments of deeds relating to (*fill in the description of the property from the Requisition*)
and that no such certificate has been filed in that name (*or* in any one or more of those names) during the period aforesaid.
or and that except the certificate (*or* certificates) described in the Schedule hereto, no such certificate has been filed in that name (*or* in any one or more of those names) during the period aforesaid.

Surname.	Christian Names of wife and Husband.	Date of Certificate.	Date of Deed.	County, Parish, or Place in which Property situated, or other description of the Property.

Dated day of 188 .

FORM X.

CERTIFICATE OF SEARCH BY REGISTRAR OF JUDGMENTS UNDER CONVEYANCING ACT, 1882, s. 2.

Supreme Court of Judicature,
Central Office.

The Registry of Judgments.

Certificate of Search pursuant to Section 2 of the Conveyancing Act, 1882.

In the matter of *A.B.* and *C. D.*

This is to certify that a search has been diligently made in the Office of the Registrar of Judgments for judgments, revivals, decrees, orders, rules, lis pendens, judgments at the suit of the Crown, Statutes, recognizances, Crown bonds, inquisitions, and acceptances of office, for the period from 18 to 18 , both inclusive, and for executions for the period from 18 to 18 , both inclusive, and for annuities for the period from to 18 , both inclusive, in the name (*or* names) of and that no judgment, revival, decree, order, rule, lis pendens, judgment at the suit of the Crown, statute, recognizance, Crown bond, inquisition, acceptance of office, execution, or annuity has been registered or re-registered in that name (*or* in any one or more of those names) during the respective periods covered by the aforesaid searches.

or and that except the mentioned in the Schedule hereto no judgment, revival, decree, order, rule, lis pendens, judgment at the suit of the Crown, Statute, recognizance, Crown bond, inquisition, acceptance of office, execution, or annuity has been registered or re-registered in that name (*or* in any one or more of those names) during the respective periods covered by the aforesaid search.

THE SCHEDULE.

Dated the day of 188 .

FORM XI.

REQUISITION FOR CONTINUATION OF SEARCH UNDER THE CONVEYANCING ACT, 1882.

Supreme Court of Judicature,
Central Office.

Requisition for continuation of Search.

To the Clerk of Enrolments
or The Registrar of
Royal Courts of Justice,
London, W.C.

In the matter of *A. B.* and *C. D.*

Pursuant to section 2 of the Conveyancing Act, 1882, continue the search for [ ], made pursuant to the requisition dated the day of , 18 , in the name (*or* names) of , from the day of to the day of , 18 , both inclusive.

Signature, address, and description of person requiring the search.

Dated .

FORM XII.

CERTIFICATE OF RESULT OF CONTINUED SEARCH UNDER THE CONVEYANCING ACT, 1882, S. 2, TO BE ENDORSED ON ORIGINAL CERTIFICATE.

This is to certify that the search (*or* searches) mentioned in the within written certificate has (*or* have) been diligently continued to the day of , 18 , and that up to and including that date [except the mentioned in the schedule hereto (*these words to be omitted where nothing is found*)], no deed or other document has been enrolled, *or* no instrument has been registered, or re-registered, as a bill of sale, *or* no certificate has been filed, *or* no judgment, revival, decree, order, rule, lis pendens, judgment at the suit of the Crown, statute, recognizance, Crown bond, inquisition, acceptance of office, execution or annuity, has been registered or re-registered in the within-mentioned name (*or* in any one or more of the within-mentioned names).

Dated

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